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OCT 1 1935

Supreme Court of the United States

OCTOBER TERM, 1935

No. 55

HOPKINS FEDERAL SAVINGS AND LOAN ASSOCIATION OF MILWAUKEE, ET AL., *Petitioners,*

v.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH, CONSTITUTING THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN,

No. 56

RELIANCE BUILDING AND LOAN ASSOCIATION, A CORPORATION, *Petitioner,*

v.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH, CONSTITUTING THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN, ET AL.,

No. 57

NORTHERN BUILDING AND LOAN ASSOCIATION, A CORPORATION, *Petitioner,*

v.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH, CONSTITUTING THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN, ET AL.

ON WRITS OF CETIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

BRIEF OF PETITIONERS

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INDEX

	Page
Status of Attorneys for Petitioners	1
Official Report	2
Analysis of Section 5, Home Owners' Loan Act of 1933.	3
Analysis of the Federal Home Loan Bank Act	5
Statement of Facts	7-15
In Cause No. 55	7
In Cause No. 56	8
In Cause No. 57	8
Specification of Assigned Errors Intended to Be Urged.	15
Summary of Argument	17-20
Argument	20-61
I. Section 5(i) of Home Owners' Loan Act of 1933 is an absolute grant of right and power to any member of a Federal home loan bank to convert itself into a Federal savings and loan association. It is not merely the grant of permission if such member has right and power under State law	20
1. The Act contains the clearest sort of language granting such right and power to convert	20
2. Congress amended this Act in order to make certain the grant of right and power to convert under this Act	22
3. Congress refused or failed to require that conversion shall not contravene State laws	23
4. Similar Federal conversion statutes have been so interpreted by this Court and by the Court below in these causes	25
II. Congress had power to use the public moneys, and to provide for the borrowing of money to aid in home financing throughout the country in accordance with a systematic and general plan to promote thrift and home financing, involving the application of money through loans. Congress, having this power, could exercise it by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose	29
1. Congress had power directly to use the public moneys for the purpose of promoting thrift and home financing. Congress was not however, limited to the use of public moneys by outright appropriations, but, having that authority, could create a revolving fund to be used through loans. Instead of	

Page

an outright appropriation of public moneys to promote thrift and home financing, Congress chose to create corporate instrumentalities and to appropriate funds to be used as revolving capital funds of Federal Home Loan Banks and Federal savings and loan associations. The purpose thus subserved, through the provisions of the Act, was a public purpose and for the general welfare..... 32

2. Promotion of thrift and home-financing is in the general welfare of the nation..... 34

3. Having this power with respect to the use of public moneys for the general welfare, Congress could exercise such power by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose 34

III. Congress has power to create any fiscal agencies which it deems necessary and proper to the operations of the Federal Government. Its decision in such matters is not open to judicial review. Congress may create by original incorporation and by conversion of State institutions, as in this instance, moneyed institutions to serve as fiscal agents of the Government and to provide a market for United States bonds 39

1. The twelve Federal home loan banks constituting the Federal Home Loan Bank System are banking instrumentalities lawfully created for facilitating the fiscal operations of the Government. They are designed to promote home financing and to relieve the other financial institutions in the national fiscal system from the demands of long-term home financing credits 40

2. Federal savings and loan associations are lawfully created fiscal agencies of the United States in that: 42

(a) They are fiscal agencies for the application of public moneys for a public purpose and for the general welfare;..... 42

(b) They are fiscal agencies through which the Government supplies financial aid, through loans on a general plan, which it is competent for the Government directly to supply and to organize corporate instrumentalities to supply; 42

(c) They are constituted fiscal agencies of the Government and are bound to perform all reason-

Page

able duties imposed upon them as such agents; and 42

(d) They aid in the exercise of the borrowing power of the Government by the provisions for investment and dealing in United States Bonds.. 42

3. Each of the purposes above enumerated would alone be sufficient to sustain the Act. From their inception to their winding up, Federal savings and loan associations are, as above shown, financial institutions constituting Federal instrumentalities whose main purpose is to perform governmental functions. Congress is the sole judge of the need for these instrumentalities; Congress has measured that need in creating such instrumentalities..... 43

4. Federal savings and loan associations are banking instrumentalities to provide home mortgage credit 44

5. The Federal Home Loan Bank System and the Federal Savings and Loan System constitute further steps in the development by Congress of the national fiscal system 46

IV. There was no delegation of legislative authority by Congress in authorizing the Federal Home Loan Bank Board to make rules and regulations providing for the organization, incorporation, examination, operation, conversion, reorganization, consolidation, merger or liquidation of Federal saving and loan associations 50

1. The Board's power to issue charters is an administrative act in the execution of Congressional policy upon its finding of certain facts..... 52

2. The Board's power to regulate the conversion of State institutions into Federal savings and loan associations is an administrative act in the execution of Congressional policy upon its finding of certain facts 55

(a) The word "conversion" is a word of art which has expressed for more than 70 years a legislative policy both as to legal effect and legal procedure 55

(b) The essential legal means of exercising the right and power to convert are specified in the statute 56

Page

3. The words "re-organize, consolidate, merge or liquidate" relating to Federal financial institutions are words of art which have expressed for many years a legislative policy both as to legal effect and legal procedure 57

4. The Board's power to make rules and regulations is administrative in character. The exercise of such power consists merely of prescribing the detailed means of compliance with legislative policy expressed in the statute in order to supply the minutiae which compose the primary standards fixed by Congress and the detailed procedural steps for the accomplishment of the legislative objectives fixed by the statute 57

V. The conversion of a member of a Federal home loan bank into a Federal savings and loan association does not deprive either the State which incorporated such institution or any of the stockholders of such institution of property or contract rights without due process of law 58

Appendix A, Section 5 of Home Owners' Loan Act of 1933, as amended 62

Appendix B, Federal Home Loan Bank Act, as amended 67

TABLE OF CASES CITED

Addyston Pipe & Steel Company v. United States, 175 U. S. 211 60

Buttfield v. Stranahan, 192 U. S. 470 50

Casey v. Galli, 94 U. S. 673.. 12, 14, 25, 26, 29, 43, 55, 56, 61

Cincinnati W. & Z. R. Co. v. The Clinton County Commissioners, 1 Ohio State 88 51

City National Bank v. Phelps, 97 N. Y. 44..... 56

Clark v. Nash, 198 U. S. 361 31

Cleary, et al v. Hopkins Street Building and Loan Association, et al., 257 N. W. 684 2

Coffee v. The National Bank, 46 Mo. 140 56

Davis v. Elmira Savings Bank, 161 U. S. 275..... 40

Easton v. Iowa, 188 U. S. 220..... 40, 46

Fallbrook Irrigation District v. Bradley, 164 U. S. 112.. 31

Farmers & Merchants National Bank v. Dearing, 91 U. S. 29 ..... 39, 46

Page

Field, Marshall, & Company v. Clark, 143 U. S. 649.... 51
First National Bank v. Fellows, ex rel. The Trust Company, 244 U. S. 416 40
Flint v. Stone Tracy Company, 220 U. S. 107..... 43
Franklin Bridge Company v. Young Wood, 14 Ga. 80.. 54
Gibbons v. Ogden, 9 Wheat. 1 30
Granby Mining & Smelting Company v. Richards, 95 Mo. 106 54
Hamilton v. Kentucky Distillers Warehouse Company, 251 U. S. 146 43
Hampton Jr. & Company v. United States, 276 U. S. 394 51
Home Building & Loan Association v. Blaisdell, 290 U. S. 398 ..... 43, 61
Houck v. Little River Drainage District, 239 U. S. 254.. 31
Juilliard v. Greenman, 110 U. S. 421..... 31
Kelsey v. The National Bank, 69 Pa. 426..... 56
Legal Tender Cases, 12 Wall. 457 ..... 40, 46
Louisville & Nashville Railway Company v. Mottley, 219 U. S. 467 60
M'Culloch v. Maryland, 4 Wheat. 316.....
..... 26, 31, 38, 39, 40, 44, 46
McCray v. United States, 195 U. S. 27..... 43
Mercantile Bank v. New York, 121 U. S. 138..... 40
Metropolitan National Bank v. Claggett, 141 U. S. 520.. 56
Michigan Insurance Bank v. Eldred, 143 U. S. 293..... 56
Murdock v. Memphis, 87 U. S. (20 Wall.) 590..... 15
Nebbia v. New York, 291 U. S. 502 43
New York v. United States, 257 U. S. 591..... 60
Norman v. Baltimore and Ohio Railway Company, 294 U. S. 240 60
Osborn v. The Bank, 9 Wheat. 738..... 32, 37, 40, 46
Owensboro National Bank v. Owensboro, 173 U. S. 664. 46
Panama Refining Company v. Ryan, 293 U. S. 388..... 51
Scofield v. State National Bank, 9 Nebr. 316..... 56
Scranton v. Wheeler, 179 U. S. 141 61
Smith v. Kansas City Title and Trust Company (Federal Farm Loan Case), 255 U. S. 180.....
..... 32, 40, 43, 45, 48, 55
The Brig. Aurora, 7 Cr. 382 52
Thorp v. Wegefarth, 56 Pa. 82 56

Page
Union Bridge Company v. United States, 204 U. S. 364. 61
United States v. Gettysburg Electric Railway Company, 160 U. S. 668 31
United States v. Shreveport Grain & Elevator Company, 287 U. S. 77 50
United States v. The Realty Company, 163 U. S. 427... 31
United States v. Weirton Steel Company, 10 Fed. Supp. 55 31
Veazie Bank v. Fenno, 8 Wall. 533 43
Williams v. Mayor of Baltimore, 289 U. S. 36..... 43
Worcester County National Bank, *ex parte*, 279 U. S. 347 56

STATUTES CITED

Constitution of the United States:
Article I—
Section 8—
Clause 1 30
Clause 2 31
Clause 18 28
Amendments—
III 34
IV 34
XIV 59
1 Stat. 191 46
3 Stat. 266 46
13 Stat. 99 ..... 43, 46, 54, 55, 56, 61
Sec. 44 ..... 23, 25, 26, 29, 61
26 Stat. 567 51
36 Stat. 814 47
37 Stat. 732 50
38 Stat. 251 ..... 24, 47
39 Stat. 360 ..... 47, 54
42 Stat. 858 51
42 Stat. 1454, Sec. 213 ..... 24, 55
47 Stat. 725 (Federal Home Loan Bank Act)..... 5, 49
Sections—
3 5
4 6
(d) 49
5 6

Page
(f) 5
6 6
(f) 32
7 6
10 33
11 6
(g) 41
(h) 41
12 6
14 ..... 7, 41
16 41
17 5
48 Stat. 128 (Home Owners' Loan Act of 1933) .....
..... 3, 12, 13, 16, 17, 33, 49, 59
Sections—
3 49
5 ..... 2, 3, 10, 11, 16, 17, 21, 33, 49
(a) 4, 33, 53
(b) 4, 5, 33, 53
(c) 5, 33, 42, 53
(d) 4
(e) 4, 33, 52, 53
(f) 33
(g) 4, 21, 32, 33
(h) 5, 21, 33
(i) ..3, 4, 7, 10, 11, 16, 17, 20, 22, 25, 26, 42, 44, 55, 56, 58, 59, 60
(j) 4, 21, 32, 33
(k) 4, 21
8 42
48 Stat. 274 32
48 Stat. 643 ..... 3, 16, 17, 22
Sec. 6 ..... 16, 17, 22
48 Stat. 1246 (National Housing Act), Sec. 403 (a) 21
Public No. 76, 74th Congress, approved May 28, 1935 ... 3
Revised Statutes, U. S., Sec. 5154 23
United States Code:
Title 12—
Secs. 641, et seq. 54
1281 24

Page

Supplement—
Title 12
Secs.:
1724 36
1726 21

OTHER AUTHORITIES

Congressional Record:
April 27, 1933, p. 2479 49
June 5, 1933, pp. 2975, 2977, 2987 49
Cooley on Taxation, 4th Ed., Secs. 106, 107, 109..... 31
Fletcher, Encyclopedia of Corporations, Vol. 1, p. 438.. 55
Hamilton's Works (John C. Hamilton)—
Vol. 1, pp. 236, 237 34
Vol. 3, pp. 192, 250 ..... 30, 35
Vol. 4, pp. 104, 111 ..... 30, 35, 40
House of Representatives Bill No. 12280 48
House of Representatives Report No. 1418, 72d Cong., 1st Sess. 48
Jefferson's Opinion on the Bank of the United States, Feb. 15, 1791, 5 Writings, Thomas Jefferson (Ford), p. 284 30
Michie on Banks and Banking, Vol. 1, p. 6..... 44
Morawitz, Private Corporations, Vol. 1, Sec. 15..... 54
Ruling Case Law, Vol. 3, p. 375..... 44
Senate Report 133, 63d Cong., 1st Sess. 47
Story on the Constitution, 5th Ed.:
Sections—
906-991 30
979, et seq. 30
991 31
1259, et seq. 40
"Views of the President of the United States on the Subject of Internal Improvements," President Monroe, May 4, 1822 30
Willoughby on the Constitution, 2d Ed.:
Sections—
61-62 30
80 40

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Respondents,

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RELIANCE BUILDING AND LOAN ASSOCIATION, A CORPORATION,

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v.

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Respondents,

No. 57

NORTHERN BUILDING AND LOAN ASSOCIATION, A CORPORATION,

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Respondents.

BRIEF ON BEHALF OF THE PETITIONERS*

The attorneys appearing for Petitioners are Horace Russell and Emery J. Woodall. Horace Russell is General Counsel for the Federal Home Loan Bank Board, the Home

* This brief is respectfully submitted in behalf of all of the Petitioners in the three causes, Nos. 55, 56, 57.

Owners' Loan Corporation and the Federal Savings and Loan Insurance Corporation. Emery J. Woodall is Associate General Counsel for the Federal Savings and Loan Insurance Corporation. At the request of Petitioners, in view of the importance of the decision of these causes to the national home financing system provided by the Congress in the statutes involved in these causes, Messrs. Russell and Woodall have accepted, without fee, appointment as attorneys for Petitioners and so appear before this Court.

OFFICIAL REPORT

The opinion of the Supreme Court of the State of Wisconsin in the three causes consolidated below is reported in 257 N. W. 684. The official report of the State of Wisconsin has not yet been issued.

The Question

These causes present the broad question of the power of Congress to incorporate private moneyed corporations organized under State laws into the fiscal system of the United States. Congress has previously exercised such power in incorporating State banks into the national fiscal system. Whether in Section 5 of the Home Owners' Loan Act of 1933 Congress exercised such power is in question.

Petitioners will urge that Congress has supreme and exclusive power over the national fiscal system and has validly exercised such power in the statutes under review.

Cases regarding the power of Congress to create and control fiscal agencies, decided by this Court down through the history of the United States, hold that Congress has exclusive power to create fiscal agents, including corporations. Witness the First and Second Banks of the United States, the system of National Banking Associations, the Federal Reserve Banks, the Federal Farm Loan System, all of which were chartered under Federal law. Congress has more recently created the Federal Home Loan Banks, Federal savings and loan associations, the Reconstruction Finance Corporation, the Home Owners' Loan Corporation and numerous other Federal corporations to act as fiscal agents of the Government. Congress also has power to adopt existing State corporations for fiscal purposes and to transmute them into Federal corporations. This has been done during the past 70 years in the conversion of State banks into National banks.

Federal savings and loan associations which Congress has authorized to be incorporated as Federal corporations have been created as fiscal agents and as members of the Federal Home Loan Banks and thus as constituent parts of the national fiscal system. They are created to serve fiscal needs of the United States and are adapted to that service. Similar corporations chartered under State laws were available to be adopted by Congress to serve the fiscal needs of the government and to be converted into Federal corporations. Congress has validly provided for the conversion into Federal savings and loan associations of those State-chartered thrift and home financing institutions which desire to become a part of the national fiscal system under Federal charter.

ANALYSIS OF SECTION 5 OF HOME OWNERS' LOAN ACT OF 1933

Section 5 of Home Owners' Loan Act of 1933 is printed as Appendix A to this brief.

The entire Act, as amended by an Act to guarantee the bonds of the Home Owners' Loan Corporation, approved April 27, 1934, is printed with an index in the Transcript of Record, Cause No. 55, beginning on page 16.* Section 5 relating to Federal savings and loan associations begins on page 27 of such transcript. Section 5(i) is found on page 29.

Briefly, Section 5 provides:

1. The Federal Home Loan Board (hereinafter referred to as the Board) is authorized under rules and regulations prescribed by it:

(*a*) To issue charters to local mutual thrift institutions to be known as Federal savings and loan associations, in which people may invest their funds and in order to provide for the financing of homes. The Board is required to give primary consideration to the best practices of local

* The Court's attention is called to the fact that the Act has been further amended by Public—No. 76—74th Congress, being an Act to provide additional home-mortgage relief, to amend the Federal Home Loan Bank Act, the Home Owners' Loan Act of 1933 and the National Housing Act, and for other purposes, approved May 28, 1935. The fund created by Congress in Section 6 to enable the Board to encourage local thrift and home financing and to promote, organize and develop Federal savings and loan associations or similar associations organized under local laws was increased from $500,000 to $700,000 by such Act.

mutual thrift and home financing institutions in the United States in issuing such charters (Section 5(a)).

(*b*) To re-organize, consolidate, merge or liquidate such Federal associations; to appoint conservators or receivers therefor or to require equitable re-adjustment of the capital structure thereof (Section 5(d)).

(*c*) To issue charters to State institutions which are members of a Federal home loan bank upon the exercise by such institutions of the right and power to convert conferred by Section 5(i).

(*d*) To make rules and regulations for the incorporation, examination and operation of Federal savings and loan associations (Sections 5(a) and 5(b)).

2. The Board is permitted to issue charters, upon the finding of the following facts:

(*a*) Persons to whom charters are issued shall be of good character and responsibility.

(*b*) A necessity exists for such institution in the community to be served.

(*c*) There is reasonable probability of its usefulness and success.

(*d*) Such institution can be established without undue injury to properly conducted existing local thrift and home financing institutions (Section 5(e)).

3. Any member of a Federal home loan bank may convert itself into a Federal savings and loan association upon a prescribed vote at a legal meeting subject to rules and regulations of the Board (Section 5(i)).

4. The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred and full-paid income shares of any Federal savings and loan association on the terms and conditions of Sections 5(g) and 5(j).

5. Any Federal savings and loan association may be employed as fiscal agent of the Government when designated as such by the Secretary of the Treasury, and shall perform all such reasonable duties as fiscal agent as may be required of it. Any such association may act as agent for any other instrumentality of the United States when so designated by such instrumentality (Section 5(k)).

6. Federal savings and loan associations are granted exemption from all taxation now or hereafter imposed by the

United States. Their shares are exempt both as to value and the income therefrom from all taxation (except surtaxes, estate, inheritance and gift taxes) now or hereafter imposed by the United States or any other taxing authority. Such associations are also exempt from any tax imposed by any State, Territorial, county, municipal or local taxing authority greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions (Section 5(h)).

7. Any Federal savings and loan association may invest any portion of its assets in obligations of the United States or in stock or bonds of a Federal home loan bank (Section 5(c)).

8. Federal savings and loan associations shall raise their capital only in the form of payment on such shares as are authorized in their charters, which shares may be retired as is therein provided. No deposits shall be accepted (Section 5(b)).

9. Federal savings and loan associations shall lend their funds on the security of their shares, on the security of first liens upon homes or combination home and business property and other property upon limitations prescribed in Section 5(c).

10. Each Federal savings and loan association, upon its incorporation, shall be a member of the Federal home loan bank of the district in which it is located (Section 5(f)) upon qualification therefor as provided in the Federal Home Loan Bank Act, which Act is printed in full for the convenience of the Court as Appendix B to this brief.

ANALYSIS OF FEDERAL HOME LOAN BANK ACT

The Federal Home Loan Board consists of five citizens of the United States, appointed by the President by and with the advice and consent of the Senate. The Board, pursuant to Sections 3 and 17, has divided the United States into twelve bank districts and established a Federal home loan bank in each district.

Thrift and home financing institutions organized under the laws of any State or of the United States, which are subject to inspection or regulation under such laws, and which make long term home mortgage loans, are eligible

to become members of a Federal home loan bank. Membership is effected by the purchase of stock of a Federal home loan bank (Sections 4 and 5).

The Secretary of the Treasury is directed to subscribe on behalf of the United States for part of the capital of each bank (Section 6). A total sum of $124,741,000 was set aside by the Secretary of the Treasury for subscriptions to such stock. As of June 30, 1935, the Secretary of the Treasury had purchased stock in the twelve Federal Home Loan Banks totaling $81,645,700 par value.

The management of each bank is vested in a Board of twelve Directors (Section 7).

Each bank is authorized to make advances to member institutions upon the security of home mortgages or obligations of the United States or obligations fully guaranteed by the United States, subject to regulations prescribed by the Federal Home Loan Bank Board.

Briefly, the principal powers of Federal home loan banks are:

(*a*) Usual corporate powers (Section 12).

(*b*) Power to borrow money and give security therefor and issue evidences thereof, including debentures, bonds and other obligations (This power has not been exercised).

(*c*) The Federal Home Loan Bank Board may issue consolidated Federal home loan bank debentures which shall be the joint and several obligations of all Federal home loan banks, subject to certain restrictions specified in the statute (This power has not been exercised).

(*d*) Power to accept deposits made by member institutions, other Federal home loan banks or other instrumentalities of the United States. Any bank may rediscount the discounted notes of members held by other Federal home loan banks or make loans to or deposits with other Federal home loan banks, or purchase any bonds or debentures issued pursuant to the Act.

(*e*) Power to invest in obligations of the United States and securities in which trust funds may be invested under the laws of the State in which the bank is located, and to make deposits in banks or trust companies (Section 11).

When designated by the Secretary of the Treasury, each bank shall be a depositary of public money (except receipts from customs) and may be employed as a financial agent of the government and perform all such reasonable duties as may be required of it (Section 14).

STATEMENT OF FACTS

The essential facts in these three causes are:

Each Petitioner association was a corporation organized under the laws of the State of Wisconsin. Each Petitioner association now is, and, at the time petition for conversion was made, was a member of the Federal Home Loan Bank of Chicago (R. Cause No. 55, p. 45; Cause No. 56, p. 16; Cause No. 57, p. 16). Each Petitioner association applied to the Federal Home Loan Bank Board, in compliance with rules and regulations prescribed by it, for permission to convert under Section 5(i) of the Home Owners' Loan Act of 1933. Said Board granted said petitions (R. Cause No. 55, p. 13; Cause No. 56, p. 23; Cause No. 57, p. 23). Each Petitioner association thereupon in the exercise of the right and power conferred by Section 5(i) convened legal meetings to consider conversion. At each of such meetings a vote of more than 51 per centum of the votes cast was in favor of conversion (R. Cause No. 55, p. 48; Cause No. 56, p. 32; Cause No. 57, p. 33). Each Petitioner association thereupon requested the Federal Home Loan Bank Board to issue a Federal charter to it. Said Board issued a charter to Petitioner association in Cause No. 55 under the name of "Hopkins Federal Savings and Loan Association of Milwaukee" (R. Cause No. 55, p. 13). In Causes Nos. 56 and 57, charters have not as yet been issued by the Federal Home Loan Bank Board to Petitioners therein.

Cause No. 55

Respondents filed a petition for leave to commence an original action in the Supreme Court of Wisconsin on September 13, 1934, for a judgment declaring the conversion by Hopkins Street Building and Loan Association into Hopkins Federal Savings and Loan Association of Milwaukee to be null, void and of no effect; declaring said association to be under the jurisdiction of the Banking Commission of

Wisconsin; compelling the officers and directors of said association to operate it as a Wisconsin building and loan association or to wind up its affairs as provided by the statutes of the State of Wisconsin; and restraining and enjoining said association and its officers and directors from operating as a Federal savings and loan association (R. pp. 11-16).

CAUSE No. 56

Reliance Building and Loan Association, Petitioner in Cause No. 56, filed its complaint in the Circuit Court of Milwaukee County, State of Wisconsin, on or about July 21, 1934, for a judgment against Respondents enjoining and restraining them from taking possession of and interfering with the conduct and management of Petitioner and from interfering with any meetings of said association called for the purpose of considering, determining and voting upon the proposed conversion of said association into a Federal savings and loan association (R. pp. 15-20). Judgment was entered on the 12th day of September, 1934, in said Circuit Court that Petitioner had the right and power to convert into a Federal savings and loan association and that the Acts of Congress so providing are valid and constitutional; that Respondents had no right or authority to take possession of Petitioner to prevent such conversion; and that Respondents were restrained and enjoined from taking possession of Petitioner or interfering with such proposed conversion (R. p. 43).

CAUSE No. 57

Northern Building and Loan Association, Petitioner in Cause No. 57, filed its complaint in said Circuit Court on or about July 31, 1934, for a judgment against Respondents enjoining and restraining them from taking possession of and interfering with the conduct and management of Petitioner and from interfering with any meetings of said association called for the purpose of considering, determining and voting upon the proposed conversion of said association into a Federal savings and loan association (R. pp. 15-20). Judgment was entered on the 12th day of September, 1934, in said Circuit Court that Petitioner had the right and

power to convert into a Federal savings and loan association and that the Acts of Congress so providing are valid and constitutional; that Respondents had no right or authority to take possession of Petitioner to prevent such conversion; that Respondents were restrained and enjoined from taking possession of Petitioner or interfering with such proposed conversion (R. p. 44).

Respondents thereupon appealed from the judgment of said Circuit Court in Causes Nos. 56 and 57 (which had been consolidated in said Circuit Court) to the Supreme Court of the State of Wisconsin (R. Cause No. 56, p. 44; Cause No. 57, p. 45), assigning as error the failure of said Circuit Court to find:

"1. That Congress has no power to incorporate Federal savings and loan associations;

"2. Assuming that it has such power, that Congress improperly delegated this power to the Federal Home Loan Bank Board;

"3. That the language of Section 5(i) of the Home Owners' Loan Act of 1933, as amended, implies necessity of State consent to the propdsed conversion of a State building and loan association into a Federal savings and loan association; and

"4. That Congress has no power to authorize the conversion of State building and loan associations into Federal savings and loan associations without the consent of the State" (Statement as to Jurisdiction, Causes Nos. 56 and 57, pp. 18).

The Three Causes

The three causes herein were consolidated in the Supreme Court of the State of Wisconsin.

The judgment in the Supreme Court of the State of Wisconsin enjoined Hopkins Federal Savings and Loan Association of Milwaukee from operating as a Federal savings and loan association and commanded Petitioners in Cause No. 55 to operate as a Wisconsin building and loan association (R. p. 67). The judgments in Causes Nos. 56 and 57, affirmed by the Supreme Court of the State of Wisconsin on May 1, 1935, (R. Cause No. 56, p. 68; Cause No. 57, p. 69) enjoined Reliance Building and Loan Association and Northern Building and Loan Association from taking any further steps in connection with conversion (R. Cause No. 56, p. 65; Cause No. 57, p. 66).

The decision below held that Petitioners in the three causes herein had no power to divest themselves of the corporate charter derived from the State of Wisconsin and accept a Federal charter by converting pursuant to Section 5(i) of Home Owners' Loan Act of 1933; that said Act of Congress did not attempt to invest said State corporations with any power not granted to them by the State of Wisconsin but did no more than to afford consent to any State corporations which had derived power to convert from the State sovereign (R. Cause No. 55, p. 61); that said Act of Congress should be so construed in order to avoid a number of serious constitutional objections, to-wit:

(*a*) That since the State of Wisconsin, by power reserved in its constitution, has retained control over corporations under its laws, and since the State undoubtedly has plenary powers both of organization and control, prior to this Act, it cannot be ousted by any Act of Congress from these powers (R. Cause No. 55, p. 63).

(*b*) That the change in the corporate charter permitting conversion upon a vote of 51 per cent of the stockholders would be an impairment of the contract rights of the State and the stockholders of a Wisconsin corporation (R. Cause No. 55, p. 63).

(*c*) That it would divest stockholders of their rights in the corporation under State law and substitute therefor rights alleged to be equivalent in a corporation organized under the laws of the United States (R. Cause No. 55, p. 61).

Petitioners in these causes respectfully petitioned the Chief Justice of the Supreme Court of the State of Wisconsin for the allowance of appeals to this Court (R. Cause No. 55, p. 1; Cause No. 56, p. 1; Cause No. 57, p. 1). The Chief Justice allowed such appeals (R. Cause No. 55, p. 5; Cause No. 56, p, 6; Cause No. 57, p. 5). This Court on June 3, 1934, dismissed the appeals herein on motions of Respondents for want of jurisdiction and treated such appeal papers as applications for Writs of Certiorari, which were granted (R. Cause No. 55, p. 71; Cause No. 56, p. 69; Cause No. 57, p. 70).

Each Petitioner specially set up and claimed under Section 5 the right, privilege and power to convert into a Fed-

eral savings and loan association. The Court below, by its decision, denied such right, privilege and power to convert and restrained and enjoined the same. Each Petitioner set up and claimed under Section 5 immunity from compliance with the requirements of the laws of the State of Wisconsin in connection with such conversion. The decision of the Court below denied such immunity and commanded Petitioners' continued compliance with the laws of Wisconsin and subjection to the jurisdiction of the Banking Commission of the State of Wisconsin.

CONSTITUTIONALITY

The Court may deem it proper and necessary to determine the constitutionality of the statutes involved in these causes. In the exercise of its discretion, it may proceed to such determination of constitutionality because of the following facts:

1. The Court may not desire to construe Section 5(i) of the Home Owners' Loan Act of 1933 without first determining whether such enactment of Congress is a valid statute.

2. Validity of the statutes are at issue in the pleadings (R. Cause No. 55, pp. 13, 45; R. Cause No. 56, pp. 23, 28; R. Cause No. 57, pp. 25, 28).

3. Upon reversal of the Court below a final determination of these causes cannot be reached without a determination of the validity of the statutes involved. Upon such remand to the Court below the injunction can be made permanent only upon the holding that a Federal statute is invalid. The injunction can be dissolved only upon a holding that the Federal statutes are valid.

4. The Court below clearly indicated that if Section 5(i) be interpreted as Petitioners contend, to-wit, that it increased the corporate powers of such State corporations by an investiture of the right and power of converting and created an immunity from control by the State of Wisconsin and its Banking Commission and did not operate merely as consent to conversion so far as the Federal Government is concerned, it would hold such section invalid under the Constitution of the United States. Upon reversal and remand, it is, therefore, indicated that the Court below would, under such controlling interpretation, declare the Act unconstitutional. It would then be necessary for Petitioners herein to renew their appeals to this Court for a review of the constitutional questions involved.

5. The Court below used the following language relative to validity:

"If our conclusion that the Home Owners' Loan Act operates merely as an authority or consent, or definition of the conditions under which transmutation will be permitted, so far as the Federal Government is concerned, without purporting to increase corporate powers of State corporations, is not clearly sustained by the act, it must at least be said to be ambiguous and to be open to this construction. We think it should be so construed in order to avoid a number of serious constitutional objections which may here be recited without determining their validity, but merely as an aid to construction. The first is the objection that since Wisconsin, by power reserved in its constitution, has retained control over corporations organized under its laws, and since the state undoubtedly had plenary powers, both of organization and control, prior to this act, it cannot be ousted by any act of Congress from these powers; that since a building and loan association is not a banking institution, the case of *Casey* v. *Galli, supra,* has no application; that the change in the corporate charter permitting conversion upon a vote of 51 per centum of the stockholders would be an impairment of the contract rights of stockholders in a Wisconsin corporation. That these are serious constitutional objections must be conceded, whatever their proper solution may be. Further than this, an attempt on the part of Congress to interfere with the control of corporations organized under State laws, and to invest them with new powers, must certainly be regarded as a very sweeping and fundamental innovation. In view of these considerations, the act itself should contain the clearest sort of language to warrant the contention asserted by respondents. This we do not find (R. Cause No. 55, p. 63). • • •

"Since respondents' charters do not provide for transmutation and no authority emanating from the State of Wisconsin accords them the privilege, or attempts to confer corporate power upon them to transmute, two questions are suggested. First, has Congress by enactment of the Home Owners' Loan Act attempted to supersede the authority of the State and actually to invest respondents with corporate power essential to a transmutation? Second, if it be found that it was the purpose of Congress by that act thus to increase respondents' corporate pow-

ers, then, has Congress the power to accomplish this result? (R. Cause No. 55, p. 60). • • •

"As to the first question, we are of the opinion that the Federal Home Owners' Loan Act does not affect the State's right to charter corporations and retain control over them under the State constitution from the date of their beginning until in some lawfully prescribed way they pass out of existence as State corporations. Nor does that act attempt to invest the State corporations with any power not granted to them by the State which created them. The act was intended to be administered in forty-eight States, and applies to corporations operating under different degrees of State control and with different powers. It does not purport to invest the various State corporations with any new or different corporate powers. It does no more than to afford consent applicable to corporations having the power to transmute. If a State, either in the original charter of its corporation or by subsequent legislation, permitted such a transmutation as is proposed here upon consent of 75 per centum of the stockholders, such a corporation could not change into a Federal corporation upon a vote of 51 per centum of the stockholders. Nor would a State statute providing a minimum below 51 per centum render the association acceptable. The 51 per centum provision set up in the Federal act may readily be interpreted as the manner of consenting by the membership which the Federal Government requires to a transmutation. The opportunity is thus afforded to those who are so situated that they can accept the offer if it be deemed by them to be to their advantage. It does not appear to be a supplanting of the requirements in the charter of a corporation. Were it otherwise, the exercise of such a power would do two things: first, it would enable a building and loan association to escape from regulatory control reserved by the State, and second, it would divest stockholders of their rights in the corporation under State law and substitute therefor rights alleged to be equivalent in a corporation organized under the laws of the United States. As pointed out elsewhere in this opinion, this would raise serious constitutional questions, for a corporate character is not only contractual between the State and its creature corporation, but it is also contractual with respect to the rights of a stockholder in a corporation (R. Cause No. 55, p. 61). • • •

"Any method under which a State association seeks to transfer itself into a Federal group without consideration of the contractual relation existing between it and the State would seem to be ineffective. It has only the powers emanating from the State and these must be used as prescribed by the State with due consideration for the contractual rights between stockholders and the association existing by reason of State laws and the charter of the corporation. • • •

"Our attention is called to *Casey* v. *Galli*, 94 U. S. 673, 24 L. ed. 168, and particular emphasis is placed on the statement in the opinion: 'It was as competent for Congress to authorize the transmutation as to create such institutions originally' (R. Cause No. 55, p. 62). • • •

"We cannot recognize the result in that case as determining that the Federal Government may invade the jurisdiction of the State government and appropriate for its own purposes the agencies devised by the State for the welfare of its citizens or interfere against the wish of the State with respect to contracts existing between the State and corporations of its own creation. Whatever power Congress may have over transmutation of banking corporations, it may at least be reasonably questioned whether it has such power with respect to other domestic corporations organized under State law for the State's purposes in providing for the welfare of its citizens (R. Cause No. 55, p. 62). • • •

"The cause was first submitted upon arguments and *briefs dealing to a large extent with the questions of* whether Congress has power to incorporate Federal savings and loan associations and as to the power of Congress to supersede the authority of the State over building and loan associations created by the State and to invest such corporations with corporate power to transmute themselves into Federal savings and loan associations. We have since been favored by the contending parties with supplemental briefs in which are able discussions of the reservation by the State of power over corporate charters. Since then we have again examined the questions raised. We are convinced that the precise question before us relates to the power of a building and loan association, organized under and subject to the laws of the State of Wisconsin, to convert itself into a savings and loan association under the Federal act. • • •

"Under the declared law of the State, we are bound to hold that a corporation organized under our general incorporation laws has not the power to divest itself of the corporate character derived from this sovereign State by accepting a charter from any other sovereign government" (R. Cause No. 55, pp. 54, 55).

6. This Court, as far back as 1873, in the case of *Murdock v. Memphis,* 87 U. S. (20 Wall.) 590, indicated that it was within its jurisdiction, in a proper case, which Petitioners believe this to be, to render such judgment as should have been rendered by the Court below. The Court, in that case, speaking through Mr. Justice Miller, said:

"But, if it be found that the issue raised by the question of Federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the State Court of any other matter or issue which is sufficient to maintain the judgment of that court without regard to the Federal question, then this court will reverse the judgment of the State Court, and will either render such judgment here as the State Court should have rendered, or remand the case to that court, as the circumstances of the case may require" (p. 636).

SPECIFICATIONS OF ASSIGNED ERRORS INTENDED TO BE URGED

In Cause No. 55 Petitioners rely upon assigned errors Nos. 1, 3 and 5 (R., p. 7) to-wit:

"1. The Supreme Court of the State of Wisconsin under the law and evidence in this cause erred

(*a*) In determining

(i) That the conversion by appellant association into a Federal savings and loan association was null, void and of no effect,

(ii) That appellant association was still a Wisconsin building and loan association, and

(iii) That appellant association was sti.. subject to the jurisdiction of the Wisconsin Banking Commission;

(*b*) In commanding appellants to operate appellant association as a Wisconsin building and loan associa-

tion under the direction and jurisdiction of Wisconsin Banking Commission; and

(*c*) In restraining and enjoining appellants from operating appellant association as a Federal savings and loan association.

"3. The Supreme Court of the State of Wisconsin erred

(*a*) In refusing in its decision to recognize and give effect to an Act of Congress validly enacted in the execution of the powers vested in the Federal Congress by the Constitution of the United States of America, to-wit, Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended;

(*b*) By its writ of injunction, in retarding, impeding, burdening and controlling the operations of said Act of Congress; and

(*c*) In denying titles, rights, privileges and immunities of appellants specially set up and claimed by appellants under said Act of Congress.

"5. The Supreme Court of the State of Wisconsin erred in holding that paragraph (i) of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 134), as amended by Act of Congress approved April 27, 1934 (48 Stat. 643, 646), merely permitted Wisconsin associations to convert only if and when the legislature of the State of Wisconsin enacted legislation consenting to such conversion, but did not empower conversion of appellant association without legislation of the State of Wisconsin consenting to such conversion."

In Causes Nos. 56 and 57, Petitioners rely upon assigned errors Nos. 1, 2, 3, 5 and 7 (R. pp. 7), to-wit:

"1. The Supreme Court of the State of Wisconsin erred in directing and affirming the entry of an order by the Circuit Court of Milwaukee County, restraining and enjoining appellant from converting into a Federal savings and loan association.

"2. The Supreme Court of the State of Wisconsin erred in directing and affirming the entry of the judgment by the Circuit Court of Milwaukee County, dismissing appellant's complaint upon its merits.

"3. The Supreme Court of the State of Wisconsin erred in directing and affirming the entry of a judgment declaring that appellees have full power and authority to take

possession of appellant association under the laws of the State of Wisconsin.

"5. The Supreme Court of the State of Wisconsin erred

(*a*) In refusing in its decision to recognize and give effect to an Act of Congress validly enacted in the execution of the powers vested in the Federal Congress by the Constitution of the United States of America, to-wit; Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended.

(*b*) In retarding, impeding, burdening and controlling the operations of said Act of Congress; and

(*c*) In denying titles, rights, privileges and immunities of appellant specially set up and claimed by appellant under said Act of Congress.

"7. The Supreme Court of the State of Wisconsin erred in holding that paragraph (i) of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 134), as amended by Act of Congress approved April 27, 1934 (48 Stat. 643, 646), merely permitted Wisconsin associations to convert only if and when the legislature of the State of Wisconsin enacted legislation consenting to such conversion, but did not empower conversion of appellant without legislation of the State of Wisconsin consenting to such conversion."

SUMMARY OF ARGUMENT

We submit that:

I. Section 5(i) of Home Owners' Loan Act of 1933 is an absolute grant of right and power to any member of a Federal home loan bank to convert itself into a Federal savings and loan association. It is not merely the grant of permission if such member has right and power under State law.

1. The Act contains the clearest sort of language granting such right and power to convert.

2. Congress amended this Act in order to make certain the grant of right and power to convert under this Act.

3. Congress refused or failed to require that conversion shall not contravene State laws.

4. Similar Federal conversion statutes have been so interpreted by this Court and by the Court below in these causes.

II. Congress had power to use the public moneys, and to provide for the borrowing of money to aid in home financing throughout the country in accordance with a systematic and general plan to promote thrift and home financing, involving the application of money through loans. Congress, having this power, could exercise it by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose.

1. Congress had power directly to use the public moneys for the purpose of promoting thrift and home financing. Congress was not, however, limited to the use of public moneys by outright appropriations, but, having that authority, could create a revolving fund to be used through loans. Instead of an outright appropriation of public moneys to promote thrift and home financing, Congress chose to create corporate instrumentalities and to appropriate funds to be used as revolving capital funds of Federal Home Loan Banks and Federal savings and loan associations. The purpose thus subserved, through the provisions of the Act, was a public purpose and for the general welfare.

2. Promotion of thrift and home financing is in the general welfare of the nation.

3. Having this power with respect to the use of public moneys for the general welfare, Congress could exercise such power by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose.

III. Congress has power to create any fiscal agencies which it deems necessary and proper to the operations of the Federal Government. Its decision in such matters is not open to judicial review. Congress may create by original incorporation and by conversion of State institutions, as in this instance, moneyed institutions to serve as fiscal agents of the Government and to provide a market for United States bonds.

1. The twelve Federal home loan banks constituting the Federal Home Loan Bank System are banking instrumentalities lawfully created for facilitating the fiscal operations of the Government. They are designed to promote home financing and to relieve the other financial institutions in the national fiscal system from the demands of long term home financing credits.

2. Federal savings and loan associations are lawfully created fiscal agencies of the United States in that:

(a) They are fiscal agencies for the application of public moneys for a public purpose and for the general welfare;

(b) They are fiscal agencies through which the Government supplies financial aid, through loans on a general plan, which it is competent for the Government directly to supply and to organize corporate instrumentalities to supply;

(c) They are constituted fiscal agencies of the Government and are bound to perform all reasonable duties imposed upon them as such agents; and

(d) They aid in the exercise of the borrowing power of the Government by the provisions for investment and dealing in United States Bonds.

3. Each of the purposes above enumerated would alone be sufficient to sustain the Act. From their inception to their winding up, Federal saving and loan associations are, as above shown, financial institutions constituting Federal instrumentalities whose main purpose is to perform governmental functions. Congress is the sole judge of the need for these instrumentalities; Congress has measured that need in creating such instrumentalities.

4. Federal savings and loan associations are banking instrumentalities to provide home mortgage credit.

5. The Federal Home Loan Bank System and the Federal Savings and Loan System constitute further steps in the development by Congress of the national fiscal system.

IV. There was no delegation of legislative authority by Congress in authorizing the Federal Home Loan Bank Board to make rules and regulations providing for the organization, incorporation, examination, operation, conversion, reorganization, consolidation, merger or liquidation of Federal savings and loan associations.

1. The Board's power to issue charters is an administrative act in the execution of Congressional policy upon its finding of certain facts.

2. The Board's power to regulate the conversion of State institutions into Federal savings and loan associ-

ations is an administrative act in the execution of Congressional policy upon its finding of certain facts.

(a) The word "conversion" is a word of art which has expressed for more than 70 years a legislative policy both as to legal effect and legal procedure.

(b) The essential legal means of exercising the right and power to convert are specified in the statute.

3. The words "re-organize, consolidate, merge or liquidate" relating to Federal financial institutions are words of art which have expressed for many years a legislative policy both as to legal effect and legal procedure.

4. The Board's power to make rules and regulations is administrative in character. The exercise of such power consists merely of prescribing the detailed means of compliance with legislative policy expressed in the statute in order to supply the minutiae which compose the primary standards fixed by Congress and the detailed procedural steps for the accomplishment of the legislative objectives fixed by the statute.

V. The conversion of a member of a Federal home loan bank into a Federal savings and loan association does not deprive either the State which incorporated such institution or any of the stockholders of such institution of property or contract rights without due process of law.

I.

SECTION 5 (i) OF HOME OWNERS' LOAN ACT OF 1933 IS AN ABSOLUTE GRANT OF RIGHT AND POWER TO ANY MEMBER OF A FEDERAL HOME LOAN BANK TO CONVERT ITSELF INTO A FEDERAL SAVINGS AND LOAN ASSOCIATION. IT IS NOT MERELY THE GRANT OF PERMISSION IF SUCH MEMBER HAS RIGHT AND POWER UNDER STATE LAW.

1. The Act Contains the Clearest Sort of Language Granting Such Right and Power to Convert.

Section 5(i) reads as follows:

"(i) Any member of a Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more

of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act."

The words: "Any member • • • may convert itself into a Federal Savings and Loan Association under this Act • • •" clearly indicate that the member need look only to "this Act" for right and power to convert. The words "upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action"; prescribe the statutory method of exercising the legal right and power granted. The only other condition to the exercise of such right and power by such a member is compliance with the rules and regulations prescribed by the Federal Home Loan Bank Board. The only implication relating to State law arises from the words "votes cast at a legal meeting called to consider such action." Such meeting must be legally convened in accordance with the institution's charter and by-laws and State statutes. The number of votes required for the exercise of such right and power is expressly determined by "this Act," to-wit, 51 per cent or more. This condition was fulfilled (*supra*, p. 7).

The legal result of the exercise of such right and power by such vote is prescribed by this Act, to-wit: The converted association shall be entitled to all the benefits of Section 5 of this Act, including exemption from Federal and local taxation, as prescribed in Section 5(h); the right to have the Secretary of the Treasury subscribe for its preferred and full-paid income shares, as provided in Sections 5(g) and 5(j); the status of a Federal instrumentality, as provided in Section 5(k); the right to insurance of the accounts of its shareholders by the Federal Savings and Loan Insurance Corporation (Section 403 (a) of the National Housing Act, 12 U. S. C., Supp. 1726). It becomes subjected to examination and regulation by the Federal Home Loan Bank Board. It is no longer subject to examination or regulation by any State authority. It has immunity from compliance with State laws and orders of State regulatory authorities.

The right and power to convert, the means of exercising such right and power, and the legal result of the exercise of such right and power, are fixed exclusively by this Act, except solely as to the assembly of the legal meeting called to consider conversion.

2. Congress Amended this Act in Order to Make Certain the Grant of Right and Power to Convert Under this Act.

Prior to the Act of Congress approved April 27, 1934 (48 Stat. 643, 646), the means of exercising the right and power was not determined by this Act. Section 5(i) as originally enacted (48 Stat. 134) provided that the right and power be exercised by "a vote of its stockholders as provided by the law under which it operates." From June 13, 1933, until April 27, 1934, the right and power could not be exercised if the law of the State under which a member was organized failed expressly to authorize conversion. This Act, before it was amended by Section 6 of the Act of Congress approved April 27, 1934 (48 Stat. 646), was intended, in the words of the decision of the Court below, "to be administered in forty-eight States" (R. Cause No. 55, p. 61), and did prescribe a different means of exercising the right and power to convert by "corporations operating under different degrees of State control and with different powers" (ibid). It seems evident, however, that when Section 6 of the Act of Congress approved April 27, 1934 (48 Stat. 646), struck out the words "upon a vote of its stockholders as provided by the law under which it operates" and inserted in lieu thereof the words "upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action," Congress intended thereby to provide that any member could exercise the right and power to convert "under this Act" without regard to the vote required by State statute, upon obtaining a vote of 51 per cent or more of the votes cast at such legal meeting.

By such amendment Congress made certain the grant of right and power to convert without regard for State law, except as to the manner of calling "a legal meeting" of stockholders. The effect of such amendment of Section 5(i) by Congress is destroyed by the interpretation of the Court below, to-wit:

"It does no more than to afford consent applicable to corporations having the power to transmute. If a State, either in the original charter of its corporation or by subsequent legislation, permitted such a transmutation as is proposed here upon consent of 75 per centum of the stockholders, such a corporation could not change into a Federal corporation upon a vote of 51 per centum of the stockholders. * * * The 51 per centum provision set up in the Federal act may readily be interpreted as the manner of consenting by the membership which the Federal Government requires to a transmutation. The opportunity is thus afforded to those who are so situated that they can accept the offer if it be deemed by them to be to their advantage. It does not appear to be a supplanting of the requirements in the charter of a corporation" (R. Cause No. 55, p. 61).

3. Congress Refused or Failed to Require that Conversion Shall Not Contravene State Laws.

Congress had before it Section 44 of The National Bank Act, as originally enacted, June 3, 1864, as follows:

"Sec. 44. *And be it further enacted,* That any bank incorporated by special law, or any banking institution organized under a general law of any State, may, by authority of this act, become a national association under its provisions, by the name prescribed in its organization certificate; and in such case the articles of association and the organization certificate required by this act may be executed by a majority of the directors of the bank or banking institution; and said certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate and to change and convert the said bank or banking institution into a national association under this act."

It also had before it, the section as codified in June 22, 1874, in the Revised Statutes of the United States, which reads:

"Sec. 5154. Any bank incorporated by special law, or any banking institution organized under a general law of any State, may become a national association under this Title by the name prescribed in its organization certificate; and in such case the articles of association and

the organization certificate may be executed by a majority of the directors of the bank or banking institution; and the certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate, and to change and convert the bank or banking institution into a national association."

Forty-nine years later, by Act of Congress approved December 23, 1913 (38 Stat. 258), Congress amended such section of The National Bank Act so as to read as follows:

"Any bank incorporated by special law of any State or of the United States, or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with any name approved by the Comptroller of the Currency: *Provided, however,* That said conversion shall not be in contravention of the State law."

The chief change of substance was the *proviso* requiring that conversion of State banks shall not contravene State laws.

On March 4, 1923, Congress provided for the conversion of State-chartered agricultural or livestock financing corporations into National Agricultural Credit Corporations, as follows:

"Sec. 1281. *Conversion of State agricultural or livestock financing corporations into National Agricultural Credit Corporations.* Any agricultural or livestock financing corporation incorporated by special laws of any State or organized under the general laws of any State and having an unimpaired capital sufficient to entitle it to become a National Agricultural Credit Corporation may, by the vote of the shareholders owning not less than 51 per centum of the capital stock of such corporation, with the approval of the Comptroller of the Currency, be converted into a National Agricultural Credit Corporation under this chapter, with any name approved by the

Comptroller of the Currency: *Provided*, That the said conversion shall not be in contravention of the State law" (Title 12, U. S. C.).

Congress did not see fit, however, to write into Section 5(i), either as originally enacted in 1933 or when it was amended in 1934, such *proviso* that: "said conversion shall not be in contravention of the State law." But the interpretation by the Court below that it is merely the grant of permission if such member has right and power under State law, amounts to writing into this Act such *proviso*, which Congress refused or failed to enact. The Court below exceeded its authority by such judicial legislation inserting such *proviso*, and should, we submit, be reversed.

4. Similar Federal Conversion Statutes Have Been So Interpreted by this Court and by the Court Below in these Causes.

Under Section 44 of The National Bank Act, as originally enacted, the Bank of New Orleans, a banking corporation organized under the laws of the State of Louisiana, converted itself into a National bank, and this conversion was recognized as valid in 1877 by the Supreme Court in *Casey* v. *Galli* (94 U. S. 673). At page 678 the Court, by Mr. Justice Swayne, said:

"No authority from the State was necessary to enable the Bank so to change its organization. The option to do that was given by the 44th section of the Banking Act of Congress. 13 Stat. at L. 112. The power there conferred was ample, and its validity cannot be doubted. The Act is silent as to any assent or permission by the State. It was as competent for Congress to authorize the transmutation as to create such institutions originally."

Referring to that statute, the Court below said:

"A majority of the directors are thereafter specifically given the power to execute all necessary papers essential to a perfection of the organization as a national association. This act constituted an unmistakable investiture of corporate powers upon State banks" (R. Cause No. 55, p. 63).

Although the Court below stated that Section 44 of the National Bank Act "constituted an unmistakable investiture of corporate powers upon State banks," it held that almost identical empowering words in this Act *did not* constitute an investiture of corporate powers upon Petitioners. In spite of the evident equivalent force of the word "may" in both Acts, the Court below stated with regard to Section 5(i) as follows:

> "The Act itself should contain the clearest sort of language to warrant the contention asserted by respondents. This we do not find" (R. Cause No. 55, p. 64).

It is respectfully submitted that the words "any member * * * may convert itself * * * under this Act" found in Section 5(i) are as clear as the empowering words "any bank * * * may become a national association under this Title * * *" found in The National Bank Act, as codified in 1874.

The Court below explained why "the clearest sort of language" in Section 5(i) granting the right and power of conversion is not accepted as a grant of the right and power to convert. Such explanation is found in the following words referring to The National Bank Act:

> "That Act authorized State banks to become National banks" (R. 55, p. 63).

The Court below discussed *Casey* v. *Galli, supra,* and said:

> "Since a building and loan association is not a banking institution, the case of *Casey* v. *Galli, supra,* has no application" (R. Cause No. 55, p. 63).
>
> "Whatever power Congress may have over transmutation of banking corporations, it may at least be reasonably questioned whether it has such power with respect to other domestic corporations organized under State law for the State's purposes in providing for the welfare of its citizens" (R. Cause No. 55, p. 62).

The Court below, by its own explanation, accepted the power of Congress to transmute banking corporations but "questioned whether it has power with respect to other domestic corporations," to-wit: the power to transmute building and loan associations.

In *M'Culloch* v. *Maryland,* 4 Wheat. 316, at page 407,

et seq., Chief Justice Marshall enumerated the powers of Congress under the Constitution with respect to banks and corporations, as follows:

"Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation,' we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. * * * It may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. * * * Is that construction of the Constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the Constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. * * * But it is denied that the Government has its choice of means; or, that it may employ the most convenient means, if, to employ them, it be necessary to erect a corporation. * * * The creation of a corporation, it is said, appertains to sovereignty. * * * In America, the powers of sovereignty are divided between the Government of the Union, and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other. * * * The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of ex-

ecuting them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. * * * The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is, therefore, perceived, why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them. But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this Constitution, in the Government of the United States, or in any department thereof' " (Article I, Sec. 8, Cl. 18).

This review of earlier Federal statutes admitted by the Court below as constituting an unmistakable investiture of corporate powers, and this explanation by the Court below in its own words of the reasons why it refused to interpret the empowering words of this Act as constituting an investiture of corporate power upon Petitioners, both compel, we submit, the holding that this Act is an absolute grant of the right and power of any member of a Federal home loan bank to convert itself into a Federal savings and loan association.

SUMMARY

Congress by this Act granted to any member the right and power to convert by complying with this Act alone. Congress amended this section as originally enacted to assure such grant of right and power. Respondents admit that Petitioners have complied with this Act:

(*a*) By obtaining the legal vote required by the Act, and

(*b*) By complying with the rules and regulations of the Federal Home Loan Bank Board promulgated pursuant to the Act.

Congress intended that Petitioners should obtain the legal result prescribed by this Act, including a Federal charter and all of the benefits accruing to all Federal savings and loan associations.

The Court below, therefore, erred as follows:

1. In holding:

(*a*) That Congress intended by this Act merely to permit Petitioners to convert only if and when the legislature of the State of Wisconsin enacted legislation consenting to such conversion; and

(*b*) That this section did not empower the conversion of your Petitioners.

2. In refusing to follow the rule of *Casey* v. *Galli, supra,* and the admittedly authoritative interpretation by this Court of almost identical language in the conversion section of The National Bank Act.

3. In determining that the conversion of Hopkins Federal Savings and Loan Association of Milwaukee was null, void and of no effect.

4. In restraining and enjoining Hopkins Federal Savings and Loan Association of Milwaukee from operating as a Federal savings and loan association and your other Petitioners from converting into Federal savings and loan associations; and in commanding them to operate as Wisconsin building and loan associations under the jurisdiction of the Wisconsin Banking Commission, thus retarding, impeding, burdening and controlling the operations of this Act of Congress; refusing to recognize and give effect to this Act of Congress; and denying titles, rights, privileges and immunities of Petitioners specially set up and claimed under this Act of Congress, to-wit, the right and power to convert and the resultant immunity from State control.

II.

CONGRESS HAD POWER TO USE THE PUBLIC MONEYS, AND TO PROVIDE FOR THE BORROWING OF MONEY TO AID IN HOME FINANCING THROUGHOUT THE COUNTRY IN ACCORDANCE WITH A SYSTEMATIC AND GENERAL PLAN TO PROMOTE THRIFT AND HOME FINANCING, INVOLVING THE APPLICATION OF MONEY THROUGH LOANS. CONGRESS, HAVING THIS POWER, COULD EXERCISE IT BY THE ADOPTION OF APPROPRIATE MEANS TO THAT END AND THE CREATION OF INSTRUMENTALITIES FOR THAT PURPOSE.

The power of Congress to create Federal savings and loan associations is implicit in and resultant from several

of the express powers of Congress enumerated in the Constitution as authoritatively construed by this Court. We enumerate briefly such express powers of Congress, to-wit:

(1) The power to tax,
(2) The power to borrow,
(3) The power to make all laws necessary and proper in executing the foregoing powers.

(1) *The power to tax.* Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States (Constitution U. S. Art I, Sec. 8, Cl. 1). The clause:

"provide for the common defense and general welfare of the United States"

has been construed as a qualification or limitation upon the taxing power rather than as creating an independent power of Congress. Such qualification upon the taxing power operates by prescribing that the purposes of appropriation of moneys obtained from taxation shall be objects which concern the common defense and general welfare of the United States.

Hamilton's Report on Manufactures, December 5, 1791, 3 Hamilton's Works (John C. Hamilton) 192.
Hamilton's Opinion on the Bank of the United States, February 23, 1791, 4 ibid. 104.
Jefferson's Opinion on the Bank of the United States, February 15, 1791, 5 Writings, Thomas Jefferson (Ford), 284.
President Monroe, "Views of the President of the United States on the Subject of Internal Improvements" transmitted to Congress in connection with his veto of the Cumberland Road Bill, May 4, 1822 (discussed by Willoughby on the Constitution, 2nd Ed., Secs. 61, 62 and Story on the Constitution, 5th Ed., Secs. 979, *et seq.*)
Story on the Constitution, 5th Ed., Secs. 906-991.

It does not appear that this Court has directly construed the relation of this clause to the power to tax. It has, however, used language indicating this construction.

Gibbons v. *Ogden*, 9 Wheat. 1, at p. 199 contains a statement of Chief Justice Marshall which is so construed

by Mr. Justice Story (Story on the Constitution, 5th Ed., Sec. 927).

U. S. v. *Gettysburg Electric Railway Co.*, 160 U. S. 668, 681.

U. S. v. *Realty Co.*, 163 U. S. 427, 440.

Story on the Constitution, 5th Ed., Sec. 991, contains an enumeration of instances of appropriations which have not been limited to enumerated powers of Congress.

Cooley, Taxation, 4th Ed., Secs. 106, 107, 109.

In *U. S.* v. *Weirton Steel Co.*, 10 Fed. Sup. 55 (February 27, 1935), the Court stated at p. 87:

> "The welfare clause is commonly considered as a specification of the purpose for which money may be appropriated and not as a substantive grant of power."

(2) *Congress shall have power to borrow money on the credit of the United States* (Constitution U. S. Art. I, Sec. 8, Cl. 2). No limitation is expressed. Implicitly funds obtained by the exercise of the borrowing power must be appropriated for a public use. Selection of the objects of such appropriations is a political question to be determined by Congress.

Juilliard v. *Greenman*, 110 U. S. 421.

As to public use see:

Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112, 161 *et seq.*

Clark v. *Nash*, 198 U. S. 361.

Houck v. *Little River Drainage District*, 239 U. S. 254.

(3) Chief Justice Marshall, in that part of the opinion in *M'Culloch* v. *Maryland*, previously quoted, p. 27, *supra*, held that the power to make all laws necessary and proper in executing the foregoing powers included the power of creating a corporation as a means of accomplishing the object of an appropriation by Congress for the general welfare.

Osborn v. *The Bank*, 9 Wheat. 738.
Smith v. *Kansas City Title & Trust Co.* (Federal Farm Loan Case), 255 U. S. 180.

1. Congress Had Power Directly to Use the Public Moneys for the Purpose of Promoting Thrift and Home Financing. Congress Was Not, However, Limited to the Use of Public Moneys by Outright Appropriations, but, Having that Authority, Could Create a Revolving Fund To Be Used Through Loans. Instead of an Outright Appropriation of Public Moneys To Promote Thrift and Home Financing, Congress Chose to Create Corporate Instrumentalities and to Appropriate Funds to Be Used as Revolving Capital Funds of Federal Home Loan Banks and Federal Savings and Loan Associations. The Purpose Thus Subserved, Through the Provisions of the Act, Was a Public Purpose and for the General Welfare.

In Section 5(g) of Home Owners' Loan Act of 1933, Congress authorized the sum of $100,000,000 to be appropriated out of any money in the Treasury not otherwise appropriated, to be immediately available and to remain available until expended to enable the Secretary of the Treasury to make subscriptions for preferred and full-paid income shares of Federal savings and loan associations. Pursuant thereto, Congress in the Fourth Deficiency Act, fiscal year 1933 (48 Stat. 274, 279), appropriated the sum of $50,000,000 to be expended as provided in Sections 5(g) and 5(j) and 6 of such Act (R. Cause No. 55, p. 31).

In Section 6(f) of the Federal Home Loan Bank Act, Congress allocated and made available to the Secretary of the Treasury the sum of $125,000,000 in order to enable the Secretary of the Treasury to subscribe and pay for stock of the Federal home loan banks. Such appropriation by Congress also took the form of creating a revolving capital fund to be used to promote thrift and home financing through loans to thrift and home financing institutions eligible to borrow from such banks.

Congress specified the public purposes to be served by such appropriation as follows:

(*a*) "In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes * * *" (Sec. 5(a)).

(*b*) Federal savings and loan associations shall raise their capital only in the form of payments on their shares (Sec. 5(b)). Such associations shall lend their funds on the security of their shares and on the security of first liens upon homes (Sec. 5(c)). There shall be in the judgment of the Board a necessity for such association in the community to be served and a reasonable probability of its usefulness and suecess without undue injury to other thrift and home financing institutions (Sec. 5(e)).

(*c*) Each such association shall automatically become a member of the Federal home loan bank of its district, thus obtaining the privilege of borrowing (upon the security of home mortgages or obligations of the United States or obligations fully guaranteed by the United States) funds with which to make further loans in the financing of homes (Sec. 5(f); Federal Home Loan Bank Act, Sec. 10).

(*d*) To justify subscription for shares of such association by the Secretary of the Treasury, the funds in the judgment of the Board must be necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community (Secs. 5(g) and 5(j)).

(*e*) Such associations are not permitted to be locally taxed in an amount greater than that imposed upon other mutual or cooperative thrift and home financing institutions (Sec. 5(h)).

(*f*) To encourage local thrift and local home financing Congress directed the Secretary of the Treasury to allocate and make immediately available to the Board out of the funds appropriated pursuant to Section 5(g) the sum of $700,000 (Sec. 6).

(*g*) Section 5 is part of:

"An Act to provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act,

to increase the market for obligations of the United States and for other purposes" (Title of Home Owners' Loan Act of 1933).

2. Promotion of Thrift and Home Financing Is in the General Welfare of the Nation.

The accumulation of thrifty citizens in thrift and home financing institutions augments the home financing power of the nation. The promotion of thrift is, therefore, not only a public purpose *per se* but serves the public purpose of the promotion of home financing. Provision for adequate means of financing homes is in the general welfare.

The importance of the home to the nation is axiomatic.

The sanctity of the home is recognized in the Constitution. No soldier shall, in time of peace, be quartered in any house without the consent of the owner nor in time of war but in a manner to be prescribed by law (Article III, Amendments to the Constitution of the United States). The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated (Article IV, Amendments to the Constitution of the United States).

Any exigency which arises affecting the welfare of the home vitally affects the welfare of the nation and properly enlists the attention and solicitude of Congress.

3. Having this Power with Respect to the Use of Public Moneys for the General Welfare, Congress Could Exercise Such Power by the Adoption of Appropriate Means to that End and the Creation of Instrumentalities for that Purpose.

As early as 1781 Alexander Hamilton, in a letter to Robert Morse, dealt with the needs of an adequate credit system, in which connection he said:

"To surmount these obstacles, and give individuals ability and inclination to lend, in any proportion to the wants of government, a plan must be devised, which, by incorporating their means together, and uniting them with those of the public, will, on the foundation of that incorporation and union, erect a mass of credit that will supply the defect of moneyed capital, and answer all the purposes of cash; a plan which will offer adventurers im-

mediate advantages, analogous to those they receive by employing their money in trade, and, eventually, greater advantages; a plan which will give them the greatest security the nature of the case will admit for what they lend; and which will not only advance their own interest, and secure the independence of their country, but, in its progress, have the most beneficial influence upon its future commerce, and be a source of national strength and wealth.

"I mean the institution of a NATIONAL BANK. * * *

"The tendency of a National Bank is to increase public and private credit. The former gives power to the State, for the protection of its rights and interests: and the latter facilitates and extends the operations of commerce among individuals. Industry is increased, commodities are multiplied, agriculture and manufactures flourish: and herein consists the true wealth and prosperity of a State." (1 Hamilton's Works, John C. Hamilton, pp. 236, 237.)

In his Report on Manufactures (December 5, 1791), Hamilton said, in part:

"It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, as far as regards an application of money" (3 ibid. 250).

In his letter to George Washington, February 23, 1791, Hamilton further said:

"The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means" (by Congress).

(Hamilton, "Opinion as to the Constitutionality of the Bank of the United States" (4 ibid. 111).

No more serious harm can befall the modern home-owner than the collapse of the facilities of home financing.

Coincident with the advancement of civilization has evolved complexities in the instruments of finance. Economic dependence of the home-owner upon social means of livelihood and upon a vast and complicated credit system has been coincident with the development of the processes of production. The possession of an axe is no longer the sole requisite of having a home.

In the history of the development of the financial system of the United States, the creation of the system of National banking associations in the financial crisis occurring immediately after the War between the States, the creation of the Federal Reserve System in 1913, and the creation of the Federal Farm Loan System in 1916, were the forerunners of the Federal Home Loan Bank System, created by Congress in 1932. Such a Home Loan Bank System was under consideration by Congress as early as 1918. The system has been supplemented by:

(*a*) The system of Federal savings and loan associations;

(*b*) Home Owners' Loan Corporation, to provide emergency relief with respect to home mortgage indebtedness; and

(*c*) Federal Savings and Loan Insurance Corporation, to provide insurance up to the full withdrawal or repurchasable value of the accounts of the members and investors, not in excess of $5,000 to any one member or investor holding withdrawable or repurchasable shares, investment certificates or deposits in thrift and home-financing institutions throughout the United States in the event of an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver or other legal custodian is appointed for an insured institution for the purpose of liquidation (12 U. S. C. Supp. 1724).

In creating the Federal Reserve System, Congress selected the Federal Reserve banks as corporate instrumentalities to accomplish the public requirements for the national fiscal system. In creating the Federal Farm Loan System, Congress likewise selected corporate instrumentali-

ties as the means of aid to agricultural development throughout the country in accordance with a systematic and general plan. In creating the Federal Home Loan Bank System, Congress has employed as corporate instrumentalities the twelve Federal home loan banks to provide a reservoir of credit for home financing. In creating the system of Federal savings and loan associations, Congress again selected corporate instrumentalities to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes through loans by such associations. Through each of these revolving funds created by such system, the effectiveness of the Congressional appropriations made in such cases was multiplied manifold times. In setting up each of these systems, Congress has accomplished that "incorporation and union" of public moneys supplied by the Government with funds supplied by the investing public, envisaged by Hamilton as early as 1781.

The fact that such corporate instrumentalities established by the Federal Government may largely be engaged in private transactions incident to the conduct of their business, that is, in receiving deposits or investments and in making loans or discounts through which they may derive the gains which justify them as business enterprises, does not militate against the authority of Congress to incorporate them as Federal agencies.

In *Osborn* v. *The Bank*, 9 Wheat. 738, the Supreme Court, answering the objection based on the private business of the bank, re-affirmed in the following words its conclusion that, while the bank was dealing with individuals for a private profit, this faculty of lending and dealing in money made the bank an appropriate instrument to aid in carrying on the fiscal operations of the Government and, therefore, it was appropriately regarded as a national instrumentality:

> "The bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the Government, is admitted; but the bank

is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the court, in the case of *M'Culloch* v. *The State of Maryland,* is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready-made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage'' (at p. 860).

The revolving fund which such Federal reserve of credit constitutes is thus a union of Federal appropriations and the savings of thrifty citizens. The institutions eligible for membership in Federal home loan banks represent the thrift and initiative of the citizenship of the nation.

When the deluge of foreclosures of home mortgages throughout the United States during the past five years reached the proportions of a national catastrophe, Congress created Home Owners' Loan Corporation to provide emergency relief with respect to home mortgage indebtedness. In the same Act of Congress, provision was made for the creation of a system of Federal savings and loan associations by original incorporation and by conversion of State-chartered thrift and home financing institutions in order to further promote thrift and to further augment credit available for the financing of homes in America. By an appropriation for the purchase by the Secretary of the Treasury of shares of such associations, Congress again effected that union of funds supplied by the Government with funds supplied by thrifty citizens, which Hamilton envisaged, for the accomplishment of the general welfare by more adequate provision for the financing of American homes.

III.

CONGRESS HAS POWER TO CREATE ANY FISCAL AGENCIES WHICH IT DEEMS NECESSARY AND PROPER TO THE OPERATIONS OF THE FEDERAL GOVERNMENT. ITS DECISION IN SUCH MATTERS IS NOT OPEN TO JUDICIAL REVIEW CONGRESS MAY CREATE BY ORIGINAL INCORPORATION AND BY CONVERSION OF STATE INSTITUTIONS, AS IN THIS INSTANCE, MONEYED INSTITUTIONS TO SERVE AS FISCAL AGENTS OF THE GOVERNMENT AND TO PROVIDE A MARKET FOR UNITED STATES BONDS.

Congress has power to create banks as fiscal agents of the Federal Government.

In *M'Culloch* v. *Maryland*, 4 Wheat. 316, at pp. 409, 422-424, the Court said:

"It is not denied that the powers given to the Government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. • • •

"If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy.

"But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. • • •

"After the most deliberate consideration, it is the unanimous and decided opinion of this court that the act to incorporate the bank of the United States is a law made in pursuance of the Constitution, and is a part of the supreme law of the land."

In *Farmers & Merchants National Bank* v. *Dearing*, 91 U. S. 29, at pp. 33-34, the Court by Mr. Justice Swayne stated:

"The constitutionality of the Act of 1864 is not questioned. It rests on the same principle as the Act creating the second Bank of the United States. The reasoning of Secretary Hamilton and of this court in *M'Culloch* v. *Maryland*, 4 Wheat. 316, and in *Osborn* v. *Bk.*, 9 Wheat. 738, therefore, applies. The national banks organized under the Act are instruments designed to be used to aid the Government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them, Congress is the sole judge."

Osborn v. *The Bank, supra.*
Legal Tender Cases, 12 Wall. 457.
Mercantile Bank v. *New York*, 121 U. S. 138.
Davis v. *Elmira Savings Bank*, 161 U. S. 275.
Easton v. Iowa, 188 U. S. 220.
First National Bank v. *The Trust Company*, 244 U. S. 416.
Smith v. *Kansas City Title & Trust Co., supra.*
Hamilton, "Opinion as to the Constitutionality of the Bank of the United States," *supra.*
Story on the Constitution, 5th Ed., Secs. 1259-1271.
Willoughby on the Constitution, 2d Ed., Sec. 80.

1. The Twelve Federal Home Loan Banks Constituting the Federal Home Loan Bank System Are Banking Instrumentalities Lawfully Created for Facilitating the Fiscal Operations of the Government. They Are Designed to Promote Home Financing and to Relieve the Other Financial Institutions in the National Fiscal System from the Demands of Long Term Home Financing Credits.

The Federal home loan banks are fiscal agencies of the Federal Government through which the appropriation of Federal monies are applied for the general welfare in the promotion of home financing.

When designated by the Secretary of the Treasury, each Federal home loan bank shall be a depositary of public

money, except receipts from customs, and may be employed as a financial agent of the Government, under such regulations as may be prescribed by the Secretary of the Treasury (Sec. 14 of the Federal Home Loan Bank Act).

Such banks aid in the exercise of the borrowing power of the Federal Government by provisions for investment and dealing in United States bonds. By Section 11(g) the Federal home loan banks are required to maintain a reserve fund equal to the amounts paid in on the outstanding capital subscriptions of members, plus an amount equal to current deposits received from members, invested in obligations of the United States, deposited in banks, or invested in short term advances to members or non-member borrowers upon certain conditions.

Federal home loan banks are authorized to invest such part of the assets as are not required for advances to members or borrowers as the bank may deem desirable, subject to regulations prescribed by the Federal Home Loan Bank Board, in obligations of the United States (Section 11(h)).

Such banks are required to invest their other reserves in obligations of the United States or in certain other designated securities subject to regulations of the Federal Home Loan Bank Board (Sec. 16).

The Federal Home Loan Bank System lays the foundation for the operations of the System of Federal Savings and Loan Associations and other thrift and home financing institutions in promoting thrift and home financing. Their capital is a revolving capital fund available through loans to members and eligible borrowers to promote home financing.

Such system is thus designed through the operations of the member and borrowing institutions to relieve the other financial institutions in the national fiscal system from the full pressure of demands for long term home financing credit.

2. Federal Savings and Loan Associations Are Lawfully Created Fiscal Agencies of the United States.

(a) They Are Fiscal Agencies for the Application of Public Monies for a Public Purpose and for the General Welfare.

As of September 24, 1935, the Secretary of the Treasury, on behalf of the United States, has invested in the shares of Federal savings and loan associations ~~$45,094,500~~, of which $22,576,700 is invested in associations which have converted under the authority of Section 5(i).

(b) They Are Fiscal Agencies Through Which the Government Supplies Financial Aid, Through Loans on a General Plan, Which It Is Competent for the Government Directly to Supply and to Organize Corporate Instrumentalities to Supply.

Public monies appropriated and invested in Federal savings and loan associations are applied by such associations through loans on the security of homes. Such appropriated moneys, as part of the capital of Federal savings and loan associations, become a revolving fund to be applied in the aid of home financing by home mortgage loans.

(c) They Are Constituted Fiscal Agencies of the Government and Are Bound to Perform All Reasonable Duties Imposed Upon Them as Such Agents.

They are available to the Secretary of the Treasury to perform such reasonable duties as he may require. They are also available as agents for any other instrumentality of the United States when so designated by such instrumentality.

Their status as Federal instrumentalities is further indicated by Section 8 of the Home Owners' Loan Act of 1933 which provides that certain offenses against these associations shall be criminally punished (R. Cause No. 55, p. 32).

(d) They Aid in the Exercise of the Borrowing Power of the Government by the Provisions for Investment and Dealing in United States Bonds.

By Section 5(c) they are authorized to invest any portion of their assets in obligations of the United States or the stock or bonds of Federal home loan banks.

3. Each of the Purposes Above Enumerated Would Alone Be Sufficient to Sustain the Act. From Their Inception to Their Winding Up, Federal Savings and Loan Associations Are, as Above Shown, Financial Institutions Constituting Federal Instrumentalities Whose Main Purpose Is to Perform Governmental Functions. Congress Is the Sole Judge of the Need for These Instrumentalities; Congress Has Measured That Need in Creating Such Instrumentalities.

Congress is not limited with respect to the creation of any fiscal agencies of the United States which in its opinion are necessary and proper. If the agency created is adapted to aid the Government in its fiscal operations in any manner, it is not within the province of the court to review the decision of Congress. The judicial branch of the Government does not question the motives of Congress in the exercise of its constitutional powers.

Veazie Bank v. *Fenno*, 8 Wall. 533.
McCray v. *U. S.*, 195 U. S. 27.
Flint v. *Stone Tracy Co.*, 220 U. S. 107.
Hamilton v. *Kentucky Distillers Warehouse Co.*, 251 U. S. 146.
Smith v. *Kansas City Title & Trust Co., supra.*
Williams v. *Mayor of Baltimore*, 289 U. S. 36.
Home B. & L. Asso. v. *Blaisdell*, 290 U. S. 398.
Nebbia v. *New York*, 291 U. S. 502.

The provisions by Congress for the creation of such instrumentalities are similar in all essential respects to the provisions made by Congress in 1864 for the creation of the System of National Banking Associations. We submit that it was as competent for Congress to create the System of Federal Savings and Loan Associations as it was for Congress to create the System of National Banking Associations. We submit, further, that as stated by this Court in *Casey* v. *Galli, supra*, it was as competent for Congress to provide for the conversion of State-chartered thrift and home financing institutions into Federal savings and loan associations as it was for Congress to provide for the original incorporation of Federal savings and loan associations. The Act is silent as to any assent or permission by the State. No authority from the State is necessary to enable any member of a Federal home loan bank so to change its

organization. The option to do that was given in Section 5(i). The power there conferred was ample.

4. Federal Savings and Loan Associations Are Banking Instrumentalities to Provide Home Mortgage Credit.

The Court below raised the question as to whether Federal savings and loan associations are banking institutions (R. Cause No. 55, p. 63).

The word "bank" is subject to many different interpretations. Michie, on page 6 of Volume 1 of his work on Banks and Banking, gives the following definition:

> "A bank is a *quasi* public institution, for the custody and loan of money, the exchange and transmission of the same by means of bills and drafts, and the issuance of its own promissory notes, payable to bearer, as currency, or for the exercise of one or more of these functions * * *."

A general definition is found in Volume 3 of Ruling Case Law, at page 375:

> "Strictly speaking the term 'bank' implies a place for the deposit of money, as that is the most obvious purpose of such an institution. Originally the business of banking consisted only in receiving deposits, but in the progress of events it was extended and bankers assumed to discount bills and notes and to loan money on mortgage, pawn, or other security, and at a still later period to issue notes of their own intended as a circulating currency and a medium of exchange instead of gold and silver. Modern bankers frequently exercise any two or even all three of those functions, and banks are frequently said to be of three kinds, viz., of deposit, of discount, and of circulation; and the authorities recognize that any person or corporation engaged in the business carried on by banks of deposit or of discount or of circulation is doing a banking business, though but one of these functions may be exercised."

In the Federal Farm Loan Case (*Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, at pp. 210, 211, in upholding the power of Congress to create Federal Land Banks and Joint-Stock Land Banks, the Court said:

"A bank may be organized with or without the authority to issue currency. It may be authorized to receive deposits in only a limited way. Speaking generally, a bank is a moneyed institution to facilitate the borrowing, lending, and caring for money. But whether technically banks, or not, these organizations may serve the governmental purposes declared by Congress in their creation. Furthermore, these institutions are organized to serve as a market for United States bonds. * * *

"We therefore conclude that the creation of these banks, and the grant of authority to them to act for the Government as depositaries of public moneys and purchasers of Government bonds, brings them within the creative power of Congress, although they may be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest. This does not destroy the validity of these enactments any more than the general banking powers destroyed the authority of Congress to create the United States bank, or the authority given to national banks to carry on additional activities destroyed the authority of Congress to create those institutions."

The reasoning of the Court in the Federal Farm Loan Case applies as well to the Federal Savings and Loan System as to the Federal Farm Loan System. There need only be substituted the words "home mortgage" for the word "farm" in the quotation above, and the analogy is complete. This definition is controlling in the instant cases. This Court answered a similar attack against the validity of the Federal Land Banks and Joint Stock Land Banks by holding that such "banks" were within the power of the Federal Congress to create.

5. The Federal Home Loan Bank System and the Federal Savings and Loan System Constitute Further Steps in the Development by Congress of the National Fiscal System.

An examination of the history of the development by Congress of the national fiscal system in its various phases to serve the varied financial needs of the United States presents in clear perspective the soundness of the policy of Congress in the creation of these additional Federal financial instrumentalities.

The first step taken by Congress in the establishment of a national fiscal system was the creation of the first Bank of the United States, by Act of Congress approved February 25, 1791 (1 Stat. 191), with a capital stock of ten million dollars, partly subscribed by the Government and partly by private parties. The charter of such bank expired in 1811 and the second Bank of the United States was created by an Act of Congress approved April 10, 1816 (3 Stat. 266).

The constitutionality of the Act creating the second bank of the United States was challenged in the case of *M'Culloch* v. *The State of Maryland, supra.* Its validity was sustained in that historic opinion of Mr. Chief Justice Marshall. The constitutionality of the Bank was again exhaustively reviewed and sustained by Chief Justice Marshall in *Osborn* v. *The Bank, supra.*

The next major step in developing the national fiscal system was the Act of Congress approved June 3, 1864 (13 Stat. 99) which inaugurated the National Banking System. The National Bank Act has always been considered by this Court well-founded in the Constitution.

Legal Tender Cases, supra.
Farmers & Merchants National Bank v. *Dearing, supra.*
Owensboro National Bank v. *Owensboro,* 173 U. S. 664.
Easton v. *Iowa, supra.*

The next step in the extension by Congress of the national fiscal system was the establishment of a banking system in the Post Office Department. A Postal Savings Depositary Office was created in the Post Office Department by an Act of Congress approved June 25, 1910 (36 Stat. 814).

In 1913, the Federal Reserve Act (38 Stat. 251) was enacted in order, as stated in Senate Report No. 133 of the 63rd Congress, first session:

> "To give stability to the commerce and industry of the United States, prevent financial panics or financial stringencies, make available effective commercial credit for individuals engaged in manufacturing, in commerce, in finance, and in business, to the extent of their just deserts; put an end to the pyramiding of the bank reserves of the country and the use of such reserves for gambling on the stock exchange."

The Federal Farm Loan Act was approved July 17, 1916 (39 Stat. 360), which provided for a complete banking system for agriculture. It established the Federal Land Banks and Joint Stock Land Banks to facilitate financial credit to farmers on the security of farm lands. Federal Land Bank loans are, in general, made through National Farm Loan Associations, incorporated under Federal charter. Various amendments have been made in the Act as originally enacted. At the present time such system under the Farm Credit Administration, is composed of:

(*a*) The Federal Land Banks, making long term loans to farmers on the security of farm land through the medium of National Farm Loan Associations;

(*b*) Production Credit Associations, making short

term loans for crop production purposes to farmers on the security of farm produce, farming implements and, when necessary, upon the security of farm lands;

(*c*) Regional Banks for Cooperatives, making loans to cooperative groups of farmers for the orderly marketing of their products;

(*d*) The Federal Intermediate Credit Banks, and Central Bank for Cooperatives which act as reserve banks for Production Credit Associations and Regional Banks for Cooperatives.

Such system was attacked on the grounds that the establishment of a banking system created solely for the assistance of the farmers of the United States was not a banking system within the purview of the powers of Congress as expounded in the M'Culloch and Osborne cases. The validity of the Federal Farm Loan System was sustained by this Court in *Smith* v. *Kansas City Title & Trust Co., supra.*

The next step in the expansion of the national fiscal system was provision for a complete banking system for home financing. A bill to create home mortgage banks was first introduced in 1918, at the instigation of the Secretary of Labor. As was pointed out to the Congress by the House Committee on Banking and Currency in its report (H. Rept. No. 1418, 72d Cong. 1st Sess., p. 3) on H. R. 12280, which became the Federal Home Loan Bank Act, approved July 22, 1932:

> "Legislation of this character has long been considered. During President Wilson's second administration, under the sponsorship of his Secretary of Labor, Wilson, the first home-loan bank measure was proposed and the Banking and Currency Committee of both Houses considered it at the time. There has been a continued interest in and need for an agency to serve the small home owner and home buyer in the cities and small towns, much after the fashion that the Federal reserve system serves the commercial interests of the country and the Federal farm loan system serves, or supplies credit to, the farmer. The need for the home mortgage discount banks has been much accentuated by the present economic conditions."

It became apparent in 1933 that the Federal reserve of home-mortgage credit created by the Federal Home Loan

Bank System was not adequate to meet the exigencies of the depression as it affected home financing. Congress enacted Home Owners' Loan Act of 1933 to provide emergency relief to home owners. In the discussions of that bill on the floors of the House and the Senate, the need for further provision for direct loans to home owners was emphasized (Congressional Record, Apr. 27, 1933, p. 2479; June 5, 1933, pp. 2975, 2977, 2987) and the System of Federal savings and loan associations was substituted by Section 5 of Home Owners' Loan Act of 1933 for the previous provision providing for direct loans to home owners (Section 4(d) of the Federal Home Loan Bank Act (47 Stat. 727), which was repealed by Section 3 of Home Owners' Loan Act of 1933 (48 Stat. 129)).

It is apparent from the history of the development of the national fiscal system in the United States that the policy of Congress in creating the Federal Home Loan Bank System and the Federal Savings and Loan System is but the normal extension to the home loan field of the historical policy of Congress theretofore exercised in the commercial banking and farm loan fields. The creation of the Federal Home Loan System in its entirety is but a normal forward step in the development of the national fiscal system. The Federal Reserve System and the National Banking System made provision for short term and general commercial banking credit. The Federal Farm Loan System made provision for the financing of agriculture. The Federal Home Loan System provides for the adequate financing of American homes and is not, we submit, less within the power of Congress. Whether such power is viewed as exercised under the power to tax and borrow for the general welfare or under its powers to create Federal fiscal agencies, Congress has such power.

To meet home financing needs, Congress could have broadened the lending powers of the Federal Reserve System or the Federal Farm Loan System. With equal validity Congress created a separate Federal Home Loan System.

IV.

THERE WAS NO DELEGATION OF LEGISLATIVE AUTHORITY BY CONGRESS IN AUTHORIZING THE FEDERAL HOME LOAN BANK BOARD TO MAKE RULES AND REGULATIONS PROVIDING FOR THE ORGANIZATION, INCORPORATION, EXAMINATION, OPERATION, CONVERSION, REORGANIZATION, CONSOLIDATION, MERGER OR LIQUIDATION OF FEDERAL SAVINGS AND LOAN ASSOCIATIONS.

This Court has clearly delimited the bounds of delegation by Congress to administrative officers or bodies. When Congress has set up a general policy and has fixed a standard, this Court has held that the delegation to administrative officers of the power to fill up the details by prescribing administrative rules and regulations is not a delegation of legislative power.

In *U. S.* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, the Court, by Mr. Justice Sutherland, rejected the contention that certain provisions of the Food and Drugs Act of 1906 were a delegation of legislative authority, and said:

> "Congress may declare its will, and after fixing a primary standard, devolve upon administrative officers the 'power to fill up the details' by prescribing administrative rules and regulations" (p. 85).

In *Buttfield* v. *Stranahan*, 192 U. S. 470, the Court held that the authority granted to the Secretary of the Treasury to establish, upon the recommendation of a board of experts, standards of purity, quality and fitness for tea imported into the United States was not a delegation of legislative authority. The Court said, at page 496:

> "This, in effect, was the fixing of a primary standard, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute * * *. Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted."

In *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, the Court held that the power given to the President of the United States by the Tariff Act of October 1, 1890, was not a delegation of legislative authority because:

1. Congress had set up a general policy.
2. Action by the President was limited to:

(*a*) The determination of a certain state of facts enumerated in the statute.

(*b*) Execution of reciprocal trade agreements when such facts were determined.

The Court in that case at p. 693 cited *Cincinnati W. & Z. R. Co.* v. *The Clinton County Commissioners* (1 Ohio State 88) from which it quoted the following:

"The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

The Court further said:

"What the President was required to do was simply in execution of the Act of Congress."

In *J. W. Hampton Jr. & Co.* v. *U. S.*, 276 U. S. 394, where the Court dealt with the so-called "flexible tariff provision" of the Act of September 21, 1933 (42 Stat. 858, 941) and with the authority which it conferred upon the President, the Court said:

"If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power. If it is thought wise to vary the customs duties according to changing conditions of production at home and abroad, it may authorize the Chief Executive to carry out this purpose, with the advisory assistance of a Tariff Commission appointed under congressional authority" (p. 409).

In *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, the Court, by Mr. Chief Justice Hughes, developed the distinc-

tion between the delegation of legislative power and conferring authority for its execution by an administrative officer or body. The opinion in that case reviewed the leading cases decided by this Court since the early case of *The Brig Aurora*, 7 Cr. 382. For that reason, we do not cite further cases at this point.

The powers devolving upon the Federal Home Loan Bank Board are:

(1) To issue charters to Federal savings and loan associations under rules and regulations prescribed by it.

(2) To make rules and regulations regarding conversion.

(3) To make rules and regulations for the reorganization, consolidation, merger or liquidation of Federal savings and loan associations, including the power to appoint the Federal Savings and Loan Insurance Corporation as the conservator or receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure thereof.

(4) To make rules and regulations regarding the operations of Federal savings and loan associations and their examination by the Board.

1. The Board's Power to Issue Charters Is an Administrative Act in the Execution of Congressional Policy Upon Its Finding of Certain Facts.

In the issuance of charters, the Board is required to find the following facts:

(*a*) The persons permitted to organize a Federal savings and loan association are of good character and responsibility.

(*b*) A necessity for such Federal savings and loan association exists in the community to be served.

(*c*) There is a reasonable probability of its usefulness and success.

(*d*) Such organization will not unduly injure properly conducted existing local thrift and home financing institutions (Sec. 5(e)).

The policy prescribed by Congress with respect to chartering Federal savings and loan associations applies both to original incorporation and conversion of State-chartered

members of Federal home loan banks into Federal savings and loan associations.

The primary standards set up by Congress are:

(*a*) The Board is authorized to issue charters in order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes (Sec. 5(a)).

(*b*) The Board must give primary consideration to the best practices of local mutual thrift and home financing institutions which have been developed in the United States during the past 100 years (Sec. 5(a)).

(*c*) There shall be a necessity for such organization in the community to be served (Sec. 5(e)).

(*d*) The organization of a Federal savings and loan association in the community to be served shall not operate to injure properly conducted local thrift and home financing institutions already existing in such community. Only persons of good character and responsibility shall be permitted to effect such organization under the statute. There shall be a reasonable probability of the usefulness and success of the association in fulfilling the purposes of its incorporation (Sec. 5(e)).

(*e*) The charter shall provide that such associations shall raise their capital only in the form of payments on shares. No deposits shall be accepted and the borrowing power shall be limited, The association shall operate on a mutual or cooperative basis as established by the best practices of local mutual thrift and home financing institutions. It shall operate as a community or local institution. Its loans may not be made upon property beyond 50 miles of the home office unless prior to conversion from a State-chartered institution the association had made loans upon property beyond said 50-mile limit. Such associations shall lend their funds on the security of their shares in aid of the thrift objective of Congress and on the security of first liens upon homes or combination home and business property in aid of the home financing objective of Congress. Limitations upon the size of single loans and restriction of loans on other improved real estate are fixed by the statute. The investments of the association are limited to obligations of the United States or the stock or bonds of a Federal home loan bank (Sec. 5(a), (b), (c)).

The authority which devolves upon the Federal Home Loan Bank Board in the execution of the Congressional policy upon the finding of certain facts are similar to the authority which devolved upon the Comptroller of the Currency under The National Bank Act with respect to the issuance of charters and certificates of authority to commence business to National Banking Associations. The Federal Farm Loan Act, 39 Stat. 360, similarly conferred administrative authority in connection with the incorporation and conversion of cooperative associations to provide credit facilities for agriculture. Although no case decided by the courts of the United States has been found which contains any holding regarding the validity of the delegation of authority contained in The National Bank Act or the Federal Farm Loan Act (12 U. S. C. Secs. 641 *et seq.*) the validity of those statutes are today beyond question.

State Courts have been frequently required to decide whether a general corporation law which provided for the issuance of charters by administrative officers or bodies involved an unconstitutional delegation of legislative authority.

In *Granby Mining & Smelting Co.* v. *Richards* (95 Mo. 106), the Court said:

> "That the power to make laws cannot be delegated by legislature is conceded on all hands * * *. Morawetz says: 'It seems, therefore, that a general power to confer corporate franchises cannot be delegated by the legislature to any other agent. However, where the legislature has enacted that corporations may be formed upon compliance with certain conditions, it is no objection that ministerial duties, such as the issuing of a certificate or charter, must be performed by some officer before the incorporation takes effect' (1 Morawetz Private Corporations, Section 15). That corporations may be organized under general laws is no longer a debatable question."

In *Franklin Bridge Company* v. *Young Wood* (14 Georgia 80) the Court held that a general corporation statute was constitutional which provided that the court of the county in which an association desired to become incorporated could issue a charter upon compliance with the provisions of the general corporation law.

"The delegation to particular persons, courts or boards of the power to do such ministerial acts as may be necessary to bring into existence corporations, the formation of which the legislature has authorized, is not a violation of this constitutional principle" (1 Fletcher Encyclopedia of Corporations, 438).

The question of delegation of legislative authority was implicit in the two leading cases which have passed upon the validity of The National Bank Act and the Federal Farm Loan Act.

Casey v. *Galli, supra.*
Smith v. *Kansas City Title & Trust Co., supra.*

2. The Board's Power to Regulate the Conversion of State Institutions Into Federal Savings and Loan Associations Is an Administrative Act in the Execution of Congressional Policy Upon Its Finding of Certain Facts.

(a) The Word "Conversion" is a Word of Art Which Has Expressed for More Than 70 Years a Legislative Policy Both as to Legal Effect and Legal Procedure.

The Board must make the same determinations of fact and must in addition determine that the institution proposing to convert is a member of a Federal home loan bank. It is further limited by the meaning of the word "conversion" as established as a word of art by more than 70 years of legislative use and judicial construction.

Section 5(i) does not contain all of the detailed provisions regarding applications for permission to convert found in The National Bank Act with respect to the conversion of State banks into National Banking Associations or in the Act of March 4, 1923 (42 Stat. 1454, 1461), regarding the conversion of agricultural or live stock financing corporations into National Agricultural Credit Corporations. Such procedure regarding how many persons may apply for conversion or execute such petitions is a mere detail. It is subject to delegation to administrative officers. However, the word "conversion" today connotes both procedure and legal effect in view of the more than 70 years history of the words in Federal Statutes and decided cases. The word "conversion" used in Section 5(i) brings with it that

history imbedded in The National Bank Act and in the cases regarding conversion of State banks into National Banking Associations which have been before the Courts of the United States.

Metropolitan Nat. Bank v. *Claggett*, 141 U. S. 520.
Michigan Ins. Bank v. *Eldred*, 143 U. S. 293.
Coffee v. *Nat'l Bank*, 46 Mo. 140.
Scofield v. *State Nat'l Bank*, 9 Neb. 316.
City Nat'l Bank v. *Phelps*, 97 N. Y. 44;
Thorp v. *Wegefarth*, 56 Pa. 82.
Kelsey v. *The Nat'l Bank*, 69 Pa. 426.

(b) The Essential Legal means of Exercising the Right and Power to Convert Are Specified in the Statute.

The statute expressly provides the essential legal procedure of conversion, to-wit:

(*a*) The institution proposing to convert must be a member of a Federal Home Loan Bank.

(*b*) It must convene a legal meeting of stockholders to consider such action.

(*c*) It must obtain at such legal meeting a vote in favor of conversion of 51 per cent or more of the votes cast.

The authority of the Federal Home Loan Bank Board to make rules and regulations with respect to the conversion of any member of a Federal Home Loan Bank into a Federal savings and loan association is limited in scope by the statutory declaration of policy and the primary standards set up by Congress with respect to the original incorporation of Federal savings and loan associations.

The National Bank Act, *supra*, provided for the Comptroller of the Currency to give a certificate under his hand and official seal representing the finding of facts by such administrative official as a condition precedent to the effectiveness of the exercise by a State bank of the right and power to convert into a National Banking Association. This Court has at least impliedly sustained such administrative acts of the Comptroller of the Currency.

Casey v. *Galli*, *supra*.
Ex parte Worcester County National Bank, 279 U. S. 347.

3. The Words "Re-organize, Consolidate, Merger or Liquidate" Relating to Federal Financial Institutions Are Words of Art Which Have Expressed for Many Years a Legislative Policy Both as to Legal Effect and Legal Procedure.

The reorganization, consolidation, merger or liquidation of Federal savings and loan associations are legal ends to be attained when any Federal savings and loan association fails to fulfill the general policy of Congress for such institutions, to-wit:

(*a*) It no longer is an institution in which people may safely invest their funds.

(*b*) It is unable to provide for the financing of homes.

(*c*) The persons in control of the organization are not persons of good character or responsibility; the necessity for such an organization in the community to be served no longer exists; there is no longer a reasonable probability of its usefulness and success; its continued operation would be injurious to properly conducted local thrift and home financing institutions existing in the community; it has violated the express restrictions of the statute in its operations, *e. g.*, its loans exceed legal limits as to amount, character and location, or it has raised its capital in an unauthorized manner, accepted deposits or exceeded legal limits of borrowing.

The authority devolving upon the Board in these matters rests, therefore, upon the determination of certain facts specified by the statute in the accomplishment of the general policy laid down by Congress.

Similar authority devolved upon the Comptroller of the Currency under The National Bank Act and has been exercised with the tacit consent of the Courts of the United States for many years.

4. The Board's Power to Make Rules and Regulations Is Administrative in Character. The Exercise of Such Power Consists Merely of Prescribing the Detailed Means of Compliance with Legislative Policy Expressed in the Statute in Order to Supply the Minutiae Which Compose the Primary Standards Fixed by Congress and the Detailed Procedural Steps for the Accomplishment of the Legislative Objectives Fixed by the Statute.

V.

THE CONVERSION OF A MEMBER OF A FEDERAL HOME LOAN BANK INTO A FEDERAL SAVINGS AND LOAN ASSOCIATION DOES NOT DEPRIVE EITHER THE STATE WHICH INCORPORATED SUCH INSTITUTION OR ANY OF THE STOCKHOLDERS OF SUCH INSTITUTION OF PROPERTY OR CONTRACT RIGHTS WITHOUT DUE PROCESS OF LAW.

The Court below raises further questions regarding the constitutionality of Section 5(i) as follows:

"Their charters do not authorize them to divest themselves of the corporate charter conferred upon them by the laws of the State. They have only the powers emanating from the State. These powers must be used as prescribed by the State and with due consideration for the contractual rights between the stockholders and the corporation existing by reason of State law and the charter of the corporation (R. Cause No. 55, p. 55) • • •. There can be no doubt but that it was intended by the framers of the Constitution to reserve in the State the power to alter or repeal the charter of any corporation created by the Legislature. The Constitution having thus limited the power of the Legislature, it would seem to follow that the Legislature is without authority to divest itself of the power reserved to it by the Constitution. But if it should be held that the Legislature has such power, it is still constitutionally disabled from authorizing any part of the stockholders of a corporation created by it, to impose a new charter upon nonconsenting members of the corporation. A fundamental and radical change in the purpose of a corporation cannot be accomplished by an act of the corporation over the dissent of a single stockholder • • •. And there is a fundamental and material difference between being a member of a building and loan association over which the representatives chosen by the people of this State have the reserve power of control and being a member of one created by the legislative body of a different sovereign power (R. Cause No. 55, p. 59). • • • Since respondents' charters do not provide for transmutation and no authority emanating from the State of Wisconsin accords them the privilege, or attempts to confer corporate power upon them to transmute, two questions are suggested

First, Has Congress by enactment of the Home Owners' Loan Act attempted to supersede the authority of the State and actually to invest respondents with corporate power essential to a transmutation?

Second, If it be found that it was the purpose of Congress by that Act thus to increase respondents' corporate powers, then has Congress the power to accomplish this result? (R. Cause No. 55, p. 60).

* * * The exercise of such a power would do two things; first, it would enable a building and loan association to escape from regulatory control reserved by the State, and second, it would divest stockholders of their rights in the corporation under State law and substitute therefor rights alleged to be equivalent in a corporation organized under the laws of the United States. As pointed out elsewhere in this opinion this would raise serious constitutional questions, for a corporate charter is not only contractual between the State and its creature corporation, but it is also contractual with respect to the rights of a stockholder in a corporation. * * * Any method under which a State association seeks to transfer itself into a Federal group without consideration of the contractual relation existing between it and the State would seem to be ineffective. It has only the powers emanating from the State and these must be used as prescribed by the State with due consideration for the contractual rights between stockholders and the association existing by reason of State laws and the charter of the corporation" (R. Cause No. 55, pp. 61-62).

The pleadings in the three causes herein raise the issue whether the provisions of Section 5(i) deny to all stockholders of the association who do not desire to convert the equal protection of the laws and deprive them of property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States (R. Cause No. 55, p. 14, Causes Nos. 56 and 57, pp. 26). The Fourteenth Amendment to the Constitution of the United States is ineptly referred to. It has no bearing upon the power of Congress.

The burden of the foregoing statements of the Court

below seems to be that conversion pursuant to Section 5(i) would be

(*a*) A deprivation of property of the State in the State-chartered institutions which have converted into Federal savings and loan associations or the impairment of the rights of contract of the State, and

(*b*) The deprivation of the property of non-consenting stockholders of such institutions in the State charter or an impairment of the contractual relations between the stockholders of the converted institutions.

We submit that whatever be the exact point of such statement of the Court below, they are not well taken.

In *Norman* v. *Baltimore and Ohio Railway Co.*, 294 U. S. 240, the Court said:

"This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them" (p. 307).

In *New York* v. *U. S.*, 257 U. S. 591, the precise question of the right of Congress, in the exercise of its constitutional powers, to invalidate a charter granted by a State was before this Court.

Mr. Chief Justice Taft said:

"The next objection is that the State has a charter contract with the New York Central Railroad Company • • • and that, if the Transportation Act permits the Interstate Commerce Commission, by such an order, to enable the railroad company to violate its contract, • • • it deprives New York and her people of property without due process of law. We said in *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 230, 44 L. ed. 136, 143, 20 Sup. Ct. Rep. 96: 'Anything which directly obstructs and thus regulates that commerce which is carried on among the States, whether it is State legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce.' *Louisville & N. R. Co.* v. *Mottley*, 219 U.

S. 467, 55 L. ed. 297, 34 L. R. A. (N. S.) 671, 31 Sup. Ct. Rep. 265. See also *Scranton* v. *Wheeler*, 179 U. S. 141, 162, 163, 45 L. ed. 126, 137, 21 Sup. Ct. Rep. 48; *Union Bridge Co.* v. *United States*, 204 U. S. 364, 400, 51 L. ed. 523, 539, 27 Sup. Ct. Rep. 367" (pages 600-601).

In *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398, 435, this Court stated:

> "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order."

It would seem that the question was definitely settled by *Casey* v. *Galli*, *supra*. In that case, for the purpose of "due process," the facts were on all fours. The bank, under a similar statute (Section 44 of the Act of Congress approved June 3, 1864, 13 Stat. 99, 112) converted itself into a National bank. Its action was held valid. The conversion statute was held constitutional. Such conversion was not a deprivation of property without due process of law nor an impairment of contract rights. We submit that there is none in these causes.

It is, therefore, respectfully submitted that this Honorable Court should reverse the decision of the Supreme Court of the State of Wisconsin.

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APPENDIX A

Section 5 of Home Owners' Loan Act of 1933, as Amended.

FEDERAL SAVINGS AND LOAN ASSOCIATIONS

SEC. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.

(c) Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office: *Provided,* That not more than $20,000 shall be loaned on the security of a first lien upon any one such property; except that not exceeding 15 per centum of the assets of such association may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said fifty-mile limit, but secured by first lien thereon: *And provided further,* That any portion of the assets of such associations may be invested in obligations of the United States or the stock or bonds of a Federal Home Loan Bank: *And provided further,* That any such association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter.[1]

(d) The Board shall have full power to provide in the

[1] Sec. 18 of An Act to Provide Additional Home-Mortgage Relief amended sec. 5. (c) of the Home Owners' Loan Act of 1933 by striking out the period after the word "Bank" and inserting in lieu thereof a colon and the phrase above set forth in the text.

rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

(e) No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

(f) Each such association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

(g) The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at

no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when called there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one third of the receipts from its investing and borrowing shareholders to be used for the purpose of such retirement. In case of the liquidation of any such association the shares held by the Secretary of the Treasury shall be retired at par before any payments are made to other shareholders.

(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(i) Any member of a Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such

action; but such conversions shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.[2]

(j) In addition to the authority to subscribe for preferred shares in Federal Savings and Loan Associations, the Secretary of the Treasury is authorized on behalf of the United States to subscribe for any amount of full paid income shares in such associations, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds appropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and such subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be

[2] As amended by sec. 6 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation. Sec. 5 (i) read originally as follows:
"Any member of a Federal Home Loan Bank my convert itself into a Federal Savings and Loan Association under this Act upon a vote of its stockholders as provided by the law under which it operates; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act."

requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations.[3]

(k) When designated for that purpose by the Secretary of the Treasury, and Federal Savings and Loan Association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal Savings and Loan Association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.[4]

48 Stat. 128, 643; Public No. 76, 74th Cong., approved May 28, 1935.

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[3] Subsec. (j) was added by sec. 5 of Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

[4] Subsec. (k) was added by sec. 5 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation.

APPENDIX B

Federal Home Loan Bank Act, as Amended.

AN ACT To create Federal Home Loan Banks, to provide for the supervision thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Home Loan Bank Act."

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "board" means the Federal Home Loan Bank Board.

(2) The term "Federal Home Loan Bank" means a bank established by the board under authority of this Act.

(3) The term "State" includes the District of Columbit, Puerto Rico, the Virgin Islands of the United States, and the Territories of Alaska and Hawaii.

(4) The term "member" (except when used in reference to a member of the board) means any institution which has subscribed for the stock of a Federal Home Loan Bank.

(5) The term "home mortgage loan" means a loan made by a member or a nonmember borrower upon the security of a home mortgage.

(6) The term "home mortgage" means a mortgage upon real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which there is located a dwelling for not more than four families, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under

this Act to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.[1]

(7) The term "unpaid principal", when used in respect of a loan secured by a home mortgage means the principal thereof less the sum of (1) payments made on such principal, and (2) in cases where shares or stock are pledged as security for the loan, the payments made on such shares or stock plus earnings or dividends apportioned or credited thereon.

(8) An "amortized" or "installment" home mortgage loan shall, for the purposes of this Act, be a home mortgage loan to be repaid or liquidated in not less than eight years by means of regular weekly, monthly, or quarterly payments made directly in reduction of the debt or upon stock or shares pledged as collateral for the repayment of such loan.

(9) The term "nonmember borrower" includes an institution authorized to secure advances from a Federal Home Loan Bank under the provisions of section 6 (e).

FEDERAL HOME LOAN BANKS

SEC. 3. As soon as practicable the board shall divide the continental United States, Puerto Rico, the Virgin Islands, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall

[1] Sec. 2 (6) of the Federal Home Loan Bank Act originally read as follows:

"(6) The term 'home mortgage' means a first mortgage upon real estate, in fee simple, or leasehold under a renewable lease for not less than ninety-nine years, upon which there is located a dwelling for not more than three families, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under this Act to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby."

SEC. 507 of the National Housing Act amended sec. 2 (6) of the Federal Home Loan Bank Act to read as above set forth in the text, except that the word "four" read "three."

SEC. 1 of An Act to Provide Additional Home-Mortgage Relief struck out the word "three" and inserted in lieu thereof the word "four."

contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by the board, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable the board shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by the board. Its title shall include the name of the city at which it is established.

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, or savings bank, shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if such institution (1) is duly organized under the laws of any State or of the United States; (2) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and (3) makes such home mortgage loans as, in the judgment of the board, are long-term loans (and in the case of a savings bank, if, in the judgment of the board, its time deposits, as defined in section 19 of the Federal Reserve Act, warrant its making such loans). No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if, in the judgment of the board, its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this Act.

(b) An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for

membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as the board shall prescribe, be eligible to become a member.[1]

SEC. 5. No institution shall be admitted to or retained in membership, or granted the privileges of nonmember borrowers, if the combined total of the amounts paid to it for interest, commission, bonus, discount, premium, and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, creates an actual net cost to the home owner in excess of the maximum legal rate of interest or, in case there is a lawful contract rate of interest applicable to such transactions, in excess of such rate (regardless of any exemption from usury laws), or, in case there is no legal rate of interest or lawful contract rate of interest applicable to such transactions, in excess of 8 per centum per annum in the State where such property is located. This section applies only to home mortgage loans made after the enactment of this Act.

CAPITAL OF FEDERAL HOME LOAN BANKS AND SUBSCRIPTIONS THERETO

SEC. 6. (a) As soon as practicable after the enactment of this Act, the board, with the approval of the Secretary of the Treasury, shall determine the minimum capital of each Federal Home Loan Bank which shall be not less than $5,000,000. The board shall, as soon as practicable thereafter, open books in each district established under section 3 for subscription to the capital stock of the Federal Home Loan Bank of the district.

(b) The capital stock of each Federal Home Loan Bank

[1] As amended by sec. 3 of Home Owners' Loan Act of 1933, repealing subsec. (d) of sec. 4. Subsec. 4 (d) formerly read as follows:

"Any home owner who comes within the limits of this Act and who is unable to obtain mortgage money from any other source may obtain same from any bank organized under this Act: *Provided*, That this subsection shall not be effective when the Federal Government has had its stock retired."

shall be divided into shares of a par value of $100 each. The minimum capital stock shall be issued at par. Stock issued thereafter shall be issued at such price not less than par as may be fixed by the board.

(c) The original stock subscription for each institution eligible to become a member under section 4 shall be an amount equal to 1 per centum of the aggregate of the unpaid principal of the subscriber's home mortgage loans, but not less than $500. The board shall from time to time adjust the amount of stock held by each member so that, as nearly as possible, such member shall at all times have invested in the stock of the Federal Home Loan Bank at least an amount calculated in the manner provided in the preceding sentence (but not less than $500). If the board finds that the investment of any member in stock is greater than that required under this section, upon application of such member, the bank shall pay such member for each share of stock in excess of the amount so required an amount equal to the value of such stock, or, at the election of the bank, the whole or any part of the payments which would be so made shall be credited upon the indebtedness of the member to the bank. In either such event, stock equal in value to the amount of the payment or credit, or both, as the case may be, shall be surrendered and canceled. No share of stock shall be surrendered and canceled if the effect of such surrender and cancellation would be to violate the provisions of section 10 (c) requiring the amount of stock held by such member to equal at least one-twelfth of the outstanding advances to such member.[1]

(d) Stock subscriptions other than by the United States shall be paid for in cash, and shall be paid for at the time of application therefor, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months.

(e) If the law of the State under which an institution described in section 4 operates does not permit such insti-

[1] As amended by sec. 509 of the National Housing Act. The amendment substituted the figure $500 in lieu of $1,500 wherever it appears in sec. 6 (c).

tution to subscribe for stock in the Federal Home Loan Bank but if such institution has the power to borrow money and give security therefor, the board may permit such institution to obtain advances on the same terms and conditions and subject to the same limitations as members (except that such institution shall not be required, during the period during which advances may be made under this subsection, to subscribe for stock in the Federal Home Loan Bank or to deposit such stock as collateral security as required in section 10), but such institution shall be required to keep on deposit such security, in addition to home mortgages, for such advances, as the board shall determine, which shall equal in value 1 per centum of the aggregate unpaid principal of such institution's home mortgage loans (but not less than $500).. No advance to any such institution shall be made under authority of this subsection after the State in which the institution is organized enacts legislation authorizing such institution to subscribe for Federal Home Loan Bank stock or after the expiration of the next regular session of the legislature of such State begun after the enactment of this Act, whichever is earlier. If, at the end of such time, such institution is not authorized to subscribe for stock, the bank shall proceed to liquidate the indebtedness of such institution to the bank and to terminate its relations with such institution. No advance shall be made under authority of this subsection which matures more than one year after the advance is made, but the bank may renew any such advance for yearly periods, or less, thereafter. The maturity of no advance authorized under this subsection shall be later than the time of the enactment of legislation authorizing such institution to become a member or the expiration of such session of the legislature of the State, whichever is earlier.*

(f) The Secretary of the Treasury shall subscribe, on behalf of the United States, for such part of the minimum capital of each Federal Home Loan Bank as is not subscribed for by members under subsection (c) of this section within thirty days after books have been opened for stock subscriptions as provided in subsection (a). Pay-

* As amended by sec. 509 of the National Housing Act. The amendment substituted the figure $500 for the figure $1,500 which appeared in sec. 6 (e) of the original Act.

ments for stock subscriptions by the Secretary of the Treasury shall be subject to call in whole or in part by the board, with the approval of the Secretary of the Treasury, at such time or times as may be deemed advisable. Each Federal Home Loan Bank receiving such payments shall issue receipts therefor to the Secretary of the Treasury, and such receipts shall be evidence of the stock ownership of the United States. The aggregate amount expended by the United States for the purchase of stock under this Act shall not exceed $125,000,000. The Reconstruction Finance Corporation Act, approved January 22, 1932, is amended by adding at the end of section 2 thereof the following new paragraph:

"In order to enable the Secretary of the Treasury to make payments upon stock of Federal Home Loan Banks subscribed for by him in accordance with the Federal Home Loan Bank Act, the sum of $125,000,000, or so much thereof as may be necessary for such purpose, is hereby allocated and made available to the Secretary of the Treasury out of the capital of the corporation and/or the proceeds of notes, debentures, bonds, and other obligations issued by the corporation. For the purposes of this paragraph, the corporation shall issue such notes, bonds, debentures, and other obligations as may be necessary."

(g) After the amount of capital of a Federal Home Loan Bank paid in by members equals the amount paid in by the Secretary of the Treasury under subsection (f), such bank shall apply annually to the payment and retirement of the shares of the capital stock held by the United States, 50 per centum of all sums thereafter paid in as capital until all such capital stock held by the United States is retired at par. Stock held by the United States may at any time, in the discretion of the Federal Home Loan Bank, and with the approval of the board, be paid off at par and retired in whole or in part; and the board may at any time require such stock to be paid off at par and retired in whole or in part if in the opinion of the board the Federal Home Loan Bank has resources available therefor: *Provided*, That accumulated dividends, as provided in subsection (k), have been paid.

(h) Stock subscribed for otherwise than by the United States, and the right to the proceeds thereof, shall not be

transferred or hypothecated except as hereinafter provided and the certificates therefor shall so state.

(i) Any member may withdraw from membership in a Federal Home Loan Bank six months after filing with the board written notice of intention so to do, and the board may, after hearing, remove any member from membership, or deprive any nonmember borrower of the privilege of obtaining further advances, if, in the opinion of the board, such member or nonmember borrower has failed to comply with any provision of this Act or the regulations of the board made pursuant thereto or if, in the opinion of the board, such member or nonmember borrower is insolvent. In any such case, the indebtedness of such member or nonmember borrower to the Federal Home Loan Bank shall be liquidated, and the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Upon the liquidation of such indebtedness such member or nonmember borrower shall be entitled to the return of its collateral, and, upon surrender and cancellation of such capital stock, the member shall receive a sum equal to its cash paid subscriptions for the capital stock surrendered, except that if at any time the board finds that the paid-in capital of a Federal Home Loan Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Federal Home Loan Bank shall on the order of the board withhold from the amount to be paid in retirement of the stock a pro rata share of the amount of such impairment as determined by the board.

(j) A Federal Home Loan Bank may, with the approval of the board, permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member.

(k) All stock of any Federal Home Loan Bank shall share in dividend distributions without preference.*

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* As amended by sec. 2 of An Act to Provide Additional Home-Mortgage Relief. Sec. 6 (k) of the Federal Home Loan Bank Act formerly read as follows:

"All stock of any Federal Home Loan Bank shall share in dividend distributions without preference, except that stock subscribed for by the United States shall be entitled to dividends at a rate of 2 per centum per annum cumulative from the date of investment but in any case in which the rate of dividend is in excess of 2 per centum, the stock subscribed for by the United States shall be entitled to dividends at a rate not in excess of that paid on other stock."

SEC. 7.[7] (a) The management of each Federal Home Loan Bank shall be vested in a board of twelve directors, all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located.

(b) Four of such directors shall be appointed by the Board and shall hold office for terms of four years; except that the terms of office of the two such directors heretofore appointed shall expire at the end of the calendar years 1936 and 1937, respectively, and the terms of office of the first two such directors hereafter appointed shall expire at the end of the calendar years 1938 and 1939, respectively.

(c) Six of such directors, two of whom shall be known as class A directors, two of whom shall be known as class B directors, and two of whom shall be known as class C directors, shall be elected as provided in subsection (e), and shall hold office for terms of two years; except that the terms of office of the directors heretofore elected or appointed shall expire at the end of the terms for which they were elected or appointed.

(d) Two of such directors shall be elected by the members of the Federal Home Loan Bank without regard to classes under rules and regulations to be prescribed by the Board, and shall hold office for terms of two years; except that the term of office of one of the directors first elected under this subsection shall expire at the end of the calendar year 1936.[8]

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[7] The amendments made by sec. 3 of An Act to Provide Additional Home-Mortgage Relief to sec. 7 of the Federal Home Loan Bank Act are not effective until Jan. 1, 1936. Sec. 7 of the Federal Home Loan Bank Act, as set forth in footnote number 8, is in effect until Jan. 1, 1936.

[8] Subsections (a), (b), and (c) of sec. 7 of the Federal Home Loan Bank Act originally read as follows:

"SEC. 7. (a) The management of each Federal Home Loan Bank shall be vested in a board of eleven directors, all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located.

"(b) Two of such directors shall be appointed by the board. The terms of such directors shall expire one year and two years, respectively, from the end of the calendar year 1932, and their successors shall be appointed by the board for terms of three years.

"(c) Nine of such directors, three of whom shall be known as class A directors, three of whom shall be known as class B directors, and three of whom shall be known as class C directors, shall be first appointed by the board, and shall serve until the end of the calendar year 1932. Their successors shall be elected as provided in subsection (d),

(e)* The board shall divide all the members of each Federal Home Loan Bank into three groups which shall be designated as groups A, B, and C, which groups shall represent, respectively, and as fairly as may be, group A, the large, group B, the medium-sized, and group C, the small members, the size of such members to be determined according to the aggregate unpaid principal of the member's home mortgage loans. The board may revise the membership of such groups from time to time. Of the directors elected as hereinafter provided, each class A director shall be an officer or director of a member in group A, each class B director shall be an officer or director of a member in group B, and each class C director shall be an officer or director of a member in group C. Each member shall be entitled to nominate suitably qualified persons for election as directors of the class corresponding to the group to which such member belongs, and shall cast one vote for each director in its class. The directors of each class shall be nominated and elected in accordance with such rules and regulations as may be prescribed by the board.

(f)* Any director appointed or elected as provided in this section to fill a vacancy shall hold office only until the expiration of the term of his predecessor.

(g)* The board shall designate one of the directors of each bank to be chairman, and one to be vice chairman, of the board of directors of such bank.

(h)* If at any time when nominations are required, members shall hold less than $1,000,000 of the capital stock of the Federal Home Loan Bank, the board shall appoint a director or directors to fill the place or places for which

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and of such successors first elected one of each such class shall serve for one, two, and three years, respectively. Thereafter all such directors shall serve for three years. Directors of classes A, B, and C, whether appointed or elected, shall be chosen from among persons connected with the home-financing business."

Sec. 3 (a) of An Act to Provide Additional Home-Mortgage Relief amended subsections (a), (b), and (c) of sec. 7 of the Federal Home Loan Bank Act to comprise four subsections to read as set forth above in the text; this amendment is not effective until Jan. 1, 1936 (see footnote 7, supra).

* As amended by sec. 3 (b) of An Act to Provide Additional Home-Mortgage Relief, by relettering subsections (d), (e), (f), (g), (h), and (i) of sec. 7 of the Federal Home Loan Bank Act as subsections (e), (f), (g), (h), (i), and (j), respectively. This amendment is not effective until Jan. 1, 1936.

such nominations are required. A director so appointed shall serve until the expiration of the calendar year during which he takes office.

(i)* Each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors, subject to the approval of the board.

(j)* Such board of directors shall administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and with due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations.

EXAMINATIONS AND STUDIES BY THE BOARD

SEC. 8. The board shall cause to be made from time to time examinations of the laws of the various States of the United States and the regulations and procedure thereunder governing conditions under which institutions of the kinds which may become members or nonmember borrowers under this Act are permitted to be formed or to do business, or relating to the conveying or recording of land titles, or to homestead and other rights, or to the enforcement of the rights of holders of mortgages on lands securing loans, or otherwise. If any such examination shall indicate, in the opinion of the board, that under the laws of any such State or the regulations or procedure thereunder there would be inadequate protection to a Federal Home Loan Bank in making or collecting advances under this Act, the board may withhold or limit the operation of any Federal Home Loan Bank in such State until satisfactory conditions of law, regulation, or procedure shall be established. In any State where State examination of members or nonmember

* As amended by sec. 3 (b) of An Act to Provide Additional Home-Mortgage Relief, by relettering subsections (d), (e), (f), (g), (h), and (i) of sec. 7 of the Federal Home Loan Bank Act as subsections (e), (f), (g), (h), (i), and (j), respectively. This amendment is not effective until Jan. 1, 1936.

borrowers is deemed inadequate for the purposes of the Federal Home Loan Banks, the board shall establish such examination, all or part of the cost of which may be considered as part of the cost of making advances in such State. The banks and/or the board may make studies of trends of home and other property values, methods of appraisals, and other subjects such as they may deem useful for the general guidance of their policies and operations and those of institutions authorized to secure advances.

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

SEC. 8a.[10] There is hereby created a Federal Savings and Loan Advisory Council, which shall consist of one member for each Federal Home Loan Bank district to be elected for each Federal Home Loan Bank district to be elected annually by the board of directors of the Federal Home Loan Bank in such district and six members to be appointed annually by the Board. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Board for traveling expenses incurred in attendance at meetings of such Council. The Council shall meet at Washington, District of Columbia, at least twice a year and oftener if requested by the Board. The Council may select its chairman, vice chairman, and secretary, and adopt methods of procedure, and shall have power—

(1) To confer with the Board and board of trustees of the Federal Savings and Loan Insurance Corporation on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and such Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Board and the board of trustees of such Corporation.

ELIGIBILITY TO SECURE ADVANCES

SEC. 9. Any member or nonmember borrower of a Federal Home Loan Bank shall be entitled to apply in writing for advances. Such application shall be in such form as

[10] Sec. 8a was added by sec. 4 of An Act to Provide Additional Home-Mortgage Relief.

shall be required by the Federal Home Loan Bank with the approval of the board. Such Federal Home Loan Bank may at its discretion deny any such application, or, subject to the approval of the board, may grant it on such conditions as the Federal Home Loan Bank may prescribe.

ADVANCES TO MEMBERS

SEC. 10. (a) Each Federal Home Loan Bank is authorized to make advances to its members, upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe. Any such advance shall be subject to the following limitations as to amount:

(1) If secured by a mortgage insured under the provisions of title II of the National Housing Act, the advance may be for an amount not in excess of 90 per centum of the unpaid principal of the mortgage loan.

(2) If secured by a home mortgage given in respect of an amortized home mortgage loan which was for an original term of six years or more, or in cases where shares of stock, which are pledged as security for such loan, mature in a period of six years or more, the advance may be for an amount not in excess of 65 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of the advance exceed 60 per centum of the value of the real estate securing the home mortgage loan.

(3) If secured by a home mortgage given in respect of any other home mortgage loan, the advance shall not be for an amount in excess of 50 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of such advance exceed 40 per centum of the value of the real estate securing the home mortgage loan.

(4) If secured by obligations of the United States, or obligations fully guaranteed by the United States, the advance shall not be for an amount in excess of the face value of such obligations.[11]

[11] Sec. 10 (a) of the Federal Home Loan Bank Act read originally as follows:

"Each Federal Home Loan Bank is authorized to make advances to members and nonmember borrowers, upon the security of home mortgages, such advances to be made subject to such regulations, restric-

(b) No home mortgage shall be accepted as collateral security for an advance by a Federal Home Loan Bank if, at the time such advance is made (1) the home mortgage loan secured by it has more than twenty years to run to maturity, or (2) the home mortgage exceeds $20,000, or [12] (3) is past due more than six months when presented, unless the amount of the debt secured by such home mortgage is less than 50 per centum of the value of the real estate with

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tions, and limitations as the board may prescribe. Any such advance shall be subject to the following limitations as to amount:

"(1) If secured by a home mortgage given in respect of an amortized home mortgage loan which was for an original term of eight years or more, in cases where shares of stock, which are pledged as security for such loan, mature in a period of eight years or more, the advance may be for an amount not in excess of 60 per centum of the unpaid principal of the home mortgage loan; in no case shall the amount of the advance exceed 40 per centum of the value of the real estate securing the home mortgage loan.

"(2) If secured by a home mortgage given in respect of any other home mortgage loan, the advance shall not be for an amount in excess of 50 per centum of the unpaid principal of the home mortgage loan; in no case shall the amount of such advance exceed 30 per centum of the value of the real estate securing the home mortgage loan."

Sec. 501 of the National Housing Act amended sec. 10 (a) of the Federal Home Loan Bank Act to read as follows:

"Sec. 10. (a) Each Federal Home Loan Bank is authorized to make advances to its members, upon the security of home mortgages, subject to such regulations, restrictions, and limitations as the board may prescribe. Any such advance shall be subject to the following limitations as to amount:

"(1) If secured by a mortgage insured under the provisions of title II of the National Housing Act, the advance may be for an amount not in excess of 90 per centum of the unpaid principal of the mortgage loan.

"(2) If secured by a home mortgage given in respect of an amortized home mortgage loan which was for an original term of eight years or more, or in cases where shares of stock, which are pledged as security for such loan, mature in a period of eight years or more, the advance may be for an amount not in excess of 65 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of the advance exceed 60 per centum of the value of the real estate securing the home mortgage loan.

"(3) If secured by a home mortgage given in respect of any other home mortgage loan, the advance shall not be for an amount in excess of 50 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of such advance exceed 40 per centum of the value of the real estate securing the home mortgage loan."

Sec. 5 of An Act to Provide Additional Home-Mortgage Relief amended sec. 10 (a) of the Federal Home Loan Bank Act, as amended, to read as above set forth in the text.

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[12] As amended by sec. 6 of An Act to Provide Additional Home-Mortgage Relief. Secs. 10 (b) (1) and 10 (b) (2) of the Federal Home Loan Bank Act originally read as follows:

"(1) the home mortgage loan secured by it has more than fifteen years to run to maturity, or (2) the value of the real estate with respect to which the home mortgage is given exceeds $20,000, or . . ."

respect to which the home mortgage was given, as such real estate was appraised when the home mortgage was made.[13] For the purposes of this subsection and subsection (a) the value of real estate shall be as of the time the advance is made and shall be established by such certification by the borrowing institution, or such other evidence, as the board may require. For the purposes of this section, each Federal Home Loan Bank shall have power to make, or to cause or require to be made, such appraisals and other investigations as it may deem necessary. No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Federal Home Loan Bank shall be accepted if any director, officer, employee, attorney, or agent of the Federal Home Loan Bank or of the borrowing institution is personally liable thereon, unless the board has specifically approved by formal resolution such acceptance.

(c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the board may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twelve times the amounts paid in by such member for outstanding capital stock held by it, or made to a nonmember borrower exceed twelve times the value of the security required to be deposited under section 6(e).

(d) The institution applying for an advance shall enter into a primary and unconditional obligation to pay off all advances, together with interest and any unpaid costs and expenses in connection therewith according to the terms under which they were made, in such form as shall meet the requirements of the bank and the approval of the board. The bank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of ad-

[13] The first sentence of sec. 10 (b) of the Federal Home Loan Bank Act originally ended at the word "presented." Sec. 10 of An Act to Guarantee the Bonds of the Home Owners' Loan Corporation amended the first sentence of sec. 10 (b) of the Federal Home Loan Bank Act by adding at the end thereof the phrase above set forth in the text.

ditional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. Subject to the approval of the board, any Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provisions of this Act, or to allow to such bank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor.

SEC. 10a.[14] Until July 1, 1936, each Federal Home Loan Bank is authorized to make advances to its members, in order to enable such members to finance home repairs, improvements, and alterations. Such advances shall not be subject to the provisions and restrictions of section 10 of this Act, but shall be made upon the security of notes representing obligations incurred pursuant to, and insurable under, section 2 of the National Housing Act. Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by the Federal Home Loan Bank Board.

SEC. 10b.[15] Each Federal Home Loan Bank is authorized to make advances to nonmember mortgagees approved under title II of the National Housing Act. Such mortgagees must be chartered institutions having succession and subject to the inspection and supervision of some governmental agency, and whose principal activity in the mortgage field must consist of lending their own funds. Such advances shall not be subject to the other provisions and restrictions of this Act, but shall be made upon the security of insured mortgages, insured under title II of the National Housing Act. Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by the Federal Home Loan Bank Board, but no advance may be for an amount in excess of 90 per centum of the unpaid principal of the mortgage loan given as security.

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[14] Sec. 10a was added by sec. 502 of the National Housing Act.
[15] Sec. 10b was added by sec. 7 of An Act to Provide Additional Home-Mortgage Relief.

SEC. 11. (a) Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by the board to borrow and give security therefor and to pay interest thereon, to issue debentures, bonds, or other obligations upon such terms and conditions as the board may approve, and to do all things necessary for carrying out the provisions of this Act and all things incident thereto.

(b) The board may issue consolidated Federal Home Loan Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this Act, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as the board may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither the board nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures issued under this section and outstanding shall at no time exceed five times the total paid-in capital of all the Federal Home Loan Banks as of the time of the issue of such debentures. It shall be the duty of the board not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 10(a) of this Act by all the Federal Home Loan Banks.

(c) At any time that no debentures are outstanding under this Act, or in order to refund all outstanding consolidated debentures issued under this section, the board may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the Board may prescribe.

(d) The board shall have full power to require any Federal Home Loan Bank to deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.

(e) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as the board may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not authorized by this Act.

(f) The Board is authorized and empowered to permit, or whenever in the judgment of at least four members of the board an emergency exists requiring such action, to require, Federal Home Loan Banks, upon such terms and conditions as the board may prescribe, to rediscount the discounted notes of members held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section.

(g) Each Federal Home Loan Bank shall at all times have an amount equal to the sums paid in on outstanding capital subscriptions of its members, plus an amount equal to the current deposits received from its members, invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed one year which are made to members or nonmember borrowers, upon such terms and conditions as the board may prescribe, and (4) advances with a maturity of not to exceed one year which are made to members or nonmember borrowers whose creditor liabilities (not including advances from the Federal Home Loan Bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as the board may prescribe.

(h) Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (g)) as are not required for advances to members or nonmember borrowers, may be invested, to such extent as the bank may deem desirable and subject to such regulations, restrictions, and limitations as may be prescribed by the board, in obligations of the United States and in such securities as fiduciary and trust funds may be invested in

under the laws of the State in which the Federal Home Loan Bank is located."[16]

INCORPORATION OF BANKS, AND CORPORATE POWERS

SEC. 12. The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as the

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[16]As amended by Sec. 503 of the National Housing Act. Sec 11 of the Federal Home Loan Bank Act read originally as follows:

"SEC. 11. (a) Each Federal Home Loan Bank shall have power, subject to the approval of the board, (1) to borrow money, to give security therefor, and to pay interest thereon, and (2) to issue bonds and debentures having such maturities as may be determined by the board, secured by the transfer of eligible obligations of borrowing institutions on advances made by the bank to borrowing institutions and by the deposit of home mortgages.

"(b) The board shall prescribe rules and regulations governing the assignment, deposit, custody, substitution, and release of the obligations of borrowing institutions to the bank which are transferred and of the home mortgages securing such bonds and debentures, the forms and terms of such bonds and debentures, and the conditions under which they may be issued and retired, including any option with respect to payment and retirement thereof in advance of maturity, and such regulations shall provide for the deposit in trust, under such terms and conditions as it may deem advisable, of the home mortgages securing such bonds and debentures. For the purposes of this section the board is authorized to appoint, and fix the compensation and prescribe the duties of a registrar in each district, who shall not be connected with or interested in any Federal Home Loan Bank, any member, any nonmember borrower, or any institution of a class eligible to become a member or a nonmember borrower under this Act, and to require of such registrar a bond, in such amount and with such sureties as the board may fix, conditioned on the faithful performance of the duties required of him.

"(c) Such deposits in trust shall be so maintained that the aggregate unpaid principal of the home mortgage loans secured by the home mortgages deposited as security for bonds or debentures shall, as nearly as possible, be at all times not less than an amount equal to 190 per centum of the total outstanding amount of such issue. Cash deposited under authority of subsection (d) shall be security for an amount of bonds and debentures equal to the amount of cash deposited. Direct obligations of the United States deposited under authority of subsection (d) shall be security for an amount of bonds and debentures equal to the par value of such obligations.

"(d) The board may at any time require any Federal Home Loan Bank to deposit additional home mortgages or to make substitutions of home mortgages to secure such bonds and debentures, except that when in the opinion of the board home mortgages are not available for such purpose, it may permit, for such limited periods as it may deem advisable, the deposit of cash or direct obligations of the United States in lieu of the deposit of substitute or additional home loan mortgages.

"(e) The board shall approve or determine the rates of interest to be paid by the Federal Home Loan Banks upon the notes debentures, or bonds which they may issue except that no bond or debenture issued within seven years after the enactment of this Act shall bear a rate of interest in excess of 3½ per centum per annum, and no bond or debenture issued thereafter shall bear a rate of interest in excess of 5 per centum per annum, and shall provide such margins (not to exceed 1½

board may prescribe, make and file with the board at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as the board may require. Upon the making and filing of such organization certificate with the board, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the board it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business, but no bank building shall be bought or erected to house any such bank, nor shall any such bank make any lease for such purpose which has a term of more than ten years; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business, subject to the ap-

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per centum) between interest rates received upon advances made to borrowing institutions and interest paid upon obligations which the Federal Home Loan Bank may issue as will cover expenses of operation and reserves and, under such regulations as may be provided by the board, some part of such reserve may be devoted to retirement of the stock subscribed by the United States.

"(f) The Federal Home Loan Banks shall be jointly and severally liable for the payment when due of all bonds and debentures, and of notes and other obligations issued by any Federal Home Loan Bank, and interest thereon, in accordance with their terms: *Provided*, That this shall not prevent any particular Federal Home Loan Bank, when specifically so authorized by the board, from borrowing funds temporarily under the terms of obligations which shall expressly state in substance in such manner as shall be approved by the board that the liability therefor is confined to the issuing bank. The Federal Home Loan Banks shall from time to time in accordance with rules, regulations, and orders of the board make adequate agreements and arrangements among themselves for meeting the payment of the bonds, debentures, notes, or other obligations on which they are jointly and severally liable, and the interest thereon, but such agreements and arrangements shall not restrict in any respect the joint and several liability herein established.

"(g) Each Federal Home Loan Bank shall have power to accept only such deposits as are made by members and nonmember borrowers of such bank, or by other Federal Home Loan Banks. Such deposits shall not be subject to check, and no rate of interest in excess of 2 per centum per annum shall be paid thereon. 'Deposits' as used in this section, does not include deposits made under section 6 (e). No Federal Home Loan Bank shall transact any banking or other business not expressly authorized by this Act. Bank shall transact any banking or other business not expressly authorized by this Act.

"(h) The board is authorized and empowered to permit, or, whenever in the judgment of at least four members of the board an emergency

proval of the board; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and by its board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the board. The president of a Federal Home Loan Bank may also be a member of the board of directors thereof, but no other officer, employee, attorney, or agent of such bank, who receives compensation, may be a member of the board of directors. Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally.

EXEMPTION FROM TAXATION

SEC. 13. Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be ex-

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exists requiring such action, to require, Federal Home Loan Banks to rediscount the discounted notes of members or nonmember borrowers held by other Federal Home Loan Banks, or to purchase the bonds issued by any other Federal Home Loan Bank, or to make deposits with other Federal Home Loan Banks. In any case in which the board requires the purchase of bonds, the board shall fix the price therefor, or if the board requires the acceptance of a deposit, it shall fix the security therefor. The rediscount rates and the rates of interest to be paid upon deposits shall be fixed by the board.

"(i) Each Federal Home Loan Bank shall at all times have an amount, equal to the sums paid in on outstanding capital subscriptions of its members, plus an amount, equal to the current deposits received from its members and from nonmember borrowers, invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with maturity not greater than one year made to members or nonmember borrowers, upon such terms and conditions as the board may prescribe, and (4) advances with maturity not greater than one year made to members or nonmember borrowers the amount of whose creditor liabilities (not including advances from the Federal Home Loan Bank) does not exceed 5 per centum of such member's or nonmember borrower's net assets, which advances may be made without the security of home mortgages or other security, upon such terms and conditions as the board may prescribe.

"(j) Such part of the assets of each Federal Home Loan Bank (except reserves and except sums provided for in subsection (i) as such bank may deem available therefor, and as are not required for advances to members or nonmember borrowers, may be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the board in direct obligations of the United States and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located."

empt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority."[17] The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any home-owner debtor of such bank.

SEC. 14. When designated for that purpose by the Secretary of the Treasury, each Federal Home Loan Bank shall be a depositary of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and it may also be employed as a financial agent of the Government; and it shall perform all such reasonable duties as depositary of public money and financial agent of the Government as may be required of it.

SEC. 15. Obligations of the Federal Home Loan Banks issued with the approval of the board under this Act shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal reserve banks are authorized to act as depositaries, custodians, and/or fiscal agents for Federal Home Loan Banks in the general performance of their powers under

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[17] As amended by sec. 8 of An Act to Provide Additional Home-Mortgage Relief. The first sentence of sec. 13 of the Federal Home Loan Bank Act originally read as follows:

"Any and all notes, debentures, bonds or other such obligations issued by any bank shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority."

this Act. All obligations of Federal Home Loan Banks shall plainly state that such obligations are not obligations of the United States and are not guaranteed by the United States.

RESERVES AND DIVIDENDS

SEC. 16. Each Federal Home Loan Bank shall carry to a reserve account semiannually 20 per centum of its net earnings until said reserve account shall show a credit balance equal to 100 per centum of the paid-in capital of such bank. After said reserve has reached 100 per centum of the paid-in capital of said bank, 5 per centum of its net earnings shall be added thereto semiannually. Whenever said reserve shall have been impaired below 100 per centum of the paid-in capital it shall be restored before any dividends are paid. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as the board shall require from time to time. No dividends shall be paid except out of net earnings remaining after all reserves and charge-offs required under this Act have been provided for, and then only with the approval of the board. The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the board, in direct obligations of the United States and in such securities as fiduciary and trust funds may be invetsed in under the laws of the State in which the Federal Home Loan Bank is located.

FEDERAL HOME LOAN BANK BOARD

SEC. 17. For the purposes of this Act there shall be a board, to be known as the "Federal Home Loan Bank Board," which shall consist of five citizens of the United States appointed by the President of the United States, by and with the advice and consent of the Senate. Not more than three members of the board shall be members of the same political party. Each member shall devote his entire time to the business of the board. Before entering upon his duties each of the members shall take an oath faithfully to discharge the duties of his office. The President of the United States shall designate one of the members of the board to serve for a term of two years, one for three years,

one for four years, one for five years, and one for six years from the date of the enactment hereof, and thereafter the term of each member shall be six years from the date of the expiration of the term for which his predecessor was appointed. Whenever a vacancy shall occur among the members the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the member whose place he is selected to fill. Each of the members of the board shall receive a salary at the rate of $10,000 per annum: *Provided*, That during the fiscal year 1933 the salary shall be $9,000 per annum. The President shall designate one of the members as chairman of the board. The chairman shall be the chief executive officer of the board and in his absence or disability the duties of his office shall be performed by some one of the other members to be designated as acting chairman by the chairman in such order as he may determine. The board shall supervise the Federal Home Loan Banks created by this Act, shall perform the other duties specifically prescribed by this Act, and shall have power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this Act. The board shall have power to suspend or remove any director, officer, employee, or agent of any Federal Home Loan Bank, the cause of such suspension or removal to be communicated in writing forthwith to such director, officer, employee, or agent and to such Federal Home Loan Bank.

ADMINISTRATIVE EXPENSES

SEC. 18. (a) There is hereby authorized to be appropriated the sum of not to exceed $300,000 for salaries, travel and subsistence expenses, rents, printing and binding, furniture and equipment, law books, books of reference, periodicals, newspapers, maps, contract stenographic reporting services, telephone and telegraph services, and all other necessary expenses of the board, together with expenses preliminary to the organization and establishment of the banks created hereunder, until the end of the fiscal year 1933.

(b) The board shall have power to levy semiannually upon the Federal Home Loan Banks, and they shall pay, on

such equitable basis as the board shall determine, an assessment sufficient in its judgment to provide for the payment of its estimated expenses for the half year succeeding the levying of each such assessment, begining with the second half of the calendar year 1933. All expenses of the board incurred in carrying out the provisions of this Act, as determined by it, beginning July 1, 1933, shall be paid from the proceeds of such assessments, and if any deficiency shall occur in such fund at any time between such semiannual assessments the board shall have power to make an immediate assessment against the banks to cover such deficiency on the same basis as the original assessment. If any surplus shall remain from any assessment after the expiration of the semiannual period for which it was levied, such surplus may be deducted from the next following assessment.

SEC. 19. The board shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided in the case of members of the board. The board shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government; and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid. The receipts of the Board derived from assessments upon the Federal Home Loan Banks and from other sources (except receipts from the sale of consolidated Federal Home Loan Bank bonds and debentures issued under section 11) shall be deposited in the Treasury of the United States, and may be from time to time withdrawn therefrom to defray the expenses of the Board, and the salaries of its members and employees, whose employment, compensation, leave, and expenses shall be governed solely by the provisions of this Act, specific amendments thereof, and rules and regulations of the Board not inconsistent therewith.[18]

[18] This sentence was added by sec. 9 of An Act to Provide Additional Home-Mortgage Relief.

EXAMINATIONS AND REPORTS

SEC. 20. The board shall from time to time, at least twice annually, require examinations and reports of condition of all Federal Home Loan Banks in such form as the board shall prescribe and shall furnish periodically statements based upon the reports of the banks to the board. The board shall annually make a full report of its operations to the speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress. For the purposes of this Act, examiners appointed by the board shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act and the Federal Reserve Act, and shall have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law.

UNLAWFUL ACTS, AND PENALTIES

SEC. 21. (a) Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of a Federal Home Loan Bank or the board upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal, deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

(b) Whoever (1) falsely makes, forges, or counterfeits any note, debenture, bond, or other obligation, or coupon, in imitation of or purporting to be a note, debenture, bond, or other obligation, or coupon, issued by a Federal Home Loan Bank; or (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited note, debenture, bond, or other obligation, or coupon, purporting to have been issued by a Federal Home Loan Bank, knowing the same to be false, forged, or counterfeited; or (3) falsely alters any note, debenture, bond, or other obligation, or coupon, issued or purporting to have been issued by a Federal Home Loan Bank; or (4) passes, utters, or publishes, or attempts to pass, utter, or publish, as true

any falsely altered or spurious note, debenture, bond, or other obligation, or coupon, issued or purporting to have been issued by a Federal Home Loan Bank, knowing the same to be falsely altered or spurious, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(c) Whoever, being connected in any capacity with the board or a Federal Home Loan Bank, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise intrusted to it; or (2) with intent to defraud the board or any Federal Home Loan Bank, or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiners of the board or a Federal Home Loan Bank, makes any false entry in any book, report, or statement of or to the board or a Federal Home Loan Bank, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(d) It shall be unlawful for any individual, partnership, association, or corporation (1) which is not a Federal Home Loan Bank to use the words "Federal home loan bank," or a combination of the word "Federal" with any of such words, as a name or a part of a name under which he or it shall do business (except in the case of a name under which business is being done at the time of the enactment of this Act), or (2) which is not a Federal Home Loan Bank, to advertise or represent in any way that he or it is a Federal Home Loan Bank, or to publish or display any sign, symbol, or advertisement reasonably calculated to convey the impression that he or it is a Federal Home Loan Bank, or (3) which is not a member, to advertise or represent in any way that he or it is a member, or to publish or display any sign, symbol, or advertisement reasonably calculated to convey the impression that he or it is a member. Violations of this section shall be punishable by a fine of not exceeding $1,000 or by imprisonment of not exceeding one year, or both.

(e) The provisions of sections 112, 113, 114, 115, 116, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 202 to 207, inclusive), in so far as applicable, are extended to apply to contracts or agreements of any Federal Home Loan Bank under this Act; which, for the purposes hereof, shall be held to include advances, loans, discounts, and purchase and repurchase agreements; extensions and renewals thereof; and acceptances, releases, and substitutions of security therefor.

MISCELLANEOUS

SEC. 22. (a) In order to enable the board to carry out the provisions of this Act, the Treasury Department, the Comptroller of the Currency, the Federal Reserve Board, and the Federal reserve banks are hereby authorized, under such conditions as they may prescribe, to make available to the board in confidence for its use and the use of any Federal Home Loan Bank such reports, records, or other information as may be available, relating to the condition of institutions with respect to which any such Federal Home Loan Bank has had or contemplates having transactions under this Act or relating to persons whose obligations are offered to or held by any Federal Home Loan Bank, and to make through their examiners or other employees, for the confidential use of the board or any Federal Home Loan Bank, examinations of such institutions.

(b) Every institution which shall apply for advances under this Act shall, as a condition precedent thereto, consent to such examination as the bank or the board may require for the purposes of this Act and/or that reports of examinations by constituted authorities may be furnished by such authorities to the bank or the board upon request therefor.

SEC. 23. In order that the Federal Home Loan Banks may be supplied with such forms of stock, debentures, and bonds as may be necessary under this Act, the Secretary of the Treasury is authorized to prepare such forms thereof as shall be suitable and approved by the board, which shall be held in the Treasury subject to delivery, upon order of the board. The engraved plates, dies, and bed pieces executed in connection therewith shall remain in the custody

of the Secretary of the Treasury. The board shall reimburse the Secretary of the Treasury for any expense incurred in the preparation, custody, and delivery of such stock, debentures, and bonds.

SEC. 24. (a) Any organization organized under the laws of any State and subject to inspection and regulation under the banking or similar laws of such State shall be eligible to become a member under this Act if—

(1) it is organized solely for the purpose of supplying credit to its members;

(2) its membership (A) is confined exclusively to building and loan associations, savings and loan associations, cooperative banks, and homestead associations; or (B) is confined exclusively to savings banks; and

(3) of the institutions to which its membership is confined which are organized within the State, its membership includes a majority of such institutions.

(b) In all respects, but subject to such additional rules and regulations as the board may provide, any such organization shall be a member for the purposes of this Act.

SEC. 25. Each Federal Home Loan Bank shall have succession until dissolved by the board under this Act or by further Act of Congress.

SEC. 26. Whenever the board finds that the efficient and economical accomplishment of the purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as the board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the board, acquire assets of any such liquidated or reorganized bank and assume liabilities thereof in whole or in part.

SEC. 27. Any institution, except a national bank, trust company, or other banking organization organized under any law of the United States, including the laws relating to the District of Columbia, shall be authorized to subscribe for stock of a Federal Home Loan Bank if otherwise eligible to make such subscription under the terms of this

Act, any provision in any such law to the contrary notwithstanding.

SEC. 28. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 29. That notwithstanding any provisions of law prohibiting bonds of the United States from bearing the circulation privilege, for a period of three years from the date of enactment of this Act all outstanding bonds of the United States heretofore issued or issued during such period, bearing interest at a rate not exceeding 3⅜ per centum per annum, shall be receivable by the Treasurer of the United States as security for the issuance of circulating notes to national banking associations, and upon the deposit with the Treasurer of the United States by a national banking association of any such bonds, such association shall be entitled to receive circulating notes in the same manner and to the same extent and subject to the same conditions and limitations now provided by law in the case of 2 per centum gold bonds of the United States bearing the circulation privilege; except that the limitation contained in section 9 of the Act of July 12, 1882, as amended, with respect to the amount of lawful money which may be deposited with the Treasurer of the United States by national banking associations for the purpose of withdrawing bonds held as security for their circulating notes, shall not apply to the bonds of the United States to which the circulation privilege is extended by this section and which are held as security for such notes. Nothing contained in this section shall be construed to modify, amend, or repeal any law relating to bonds of the United States which now bear the circulation privilege.

As used in this section, the word "bonds" shall not include notes, certificates, or bills issued by the United States.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 30. The right to alter, amend, or repeal this Act is hereby expressly reserved.

47 Stat. 725; 48 Stat. 128, 643, 1246; Public No. 76, 74th Cong., approved May 28, 1935.